Solving the autonomy puzzle

Have you noticed how sometimes politicians prefer to quarrel with what their opponents have said — even if in the process they misunderstand and misrepresent — rather than comprehend an important point made by an adversary? The Bharatiya Janata Party's (BJP) response to former Union Minister and Congress leader P. Chidambaram's recent comment on Kashmiri demands is a striking example.

Both Prime Minister Narendra Modi and Finance Minister Arun Jaitley have claimed Mr. Chidambaram was advocating azaadi and criticised him for it. But he wasn't. In fact, he said something subtly but significantly different. When Kashmiris call for azaadi, he claimed, they in fact mean autonomy. Perhaps the Prime Minister and the Finance Minister missed the point?

In the first instance, Mr. Chidambaram was reading down the cry for azaadi. He was suggesting the word is a rhetorical flourish to attract attention. For most — if not the majority of — Kashmiris, it's a way of asking for autonomy. He was, therefore, indicating an escape route from the present impasse between the Kashmiri people, who demand azaadi, and a government determined not to concede it.

At a deeper level, Mr. Chidambaram was also alluding to the fact that the autonomy Kashmiris want is something they actually had in the early years after accession and which successive governments in Delhi whittled down. This is what he meant when he said, "The demand in the Kashmir Valley is to respect, in letter and spirit, Article 370." Sadly, last week he didn't make this point fully clear.

However, last year he did. In an interview to me in July 2016 on *India Today TV*, he said: "We have ignored the grand bargain under which Kashmir acceded to India. I think we broke faith, we broke promises." This was an explicit reference to the fact that in 1947, Jammu and Kashmir acceded only in terms of defence, foreign affairs and currency/communications and, unlike other States, never merged. It wanted to retain its identity within the Indian sovereignty it accepted, but over the decades that's been eroded as the jurisdiction of myriad institutions was enlarged to encompass the State.

Though last week Mr. Chidambaram did not speak about a solution, in the July interview he spelt one out: "What is necessary is to give the assurance that the grand bargain under which Kashmir acceded to India will be fully honoured." This meant: "Let them frame their own laws as long as it does not conflict with the Constitution. As much as possible we have to assure them that we will respect their identity, history, culture, religion…and [still] allow them to be part of India."

Mr. Chidambaram did not say how this should be taken forward. However, Communist Party of India (Marxist) general secretary Sitaram Yechury, in a separate interview to me in September last year, outlined one possibility. He said we need to sit with Kashmiris and revisit developments since 1947 with a willingness to roll back some. In essence, this is also the position of the National Conference. Its leaders aren't clear about what needs to be rolled back, though some want a reversal of the nomenclature changed in the 1960s and how the 'head of state' is chosen. More importantly, many are confident that institutions like the Supreme Court, the Election Commission and the Comptroller and Auditor General, which are respected in Kashmir, will be retained. The key is to let Kashmiris decide for themselves.

The core of the Chidambaram-Yechury proposal is the belief there are many ways of being Indian. If 12 States, including Himachal, Uttarakhand, Gujarat, Maharashtra and in the Northeast, can have special constitutional provisions, why not Jammu & Kashmir? This can only add to the rich

texture of being Indian, not strain the national fabric. Indeed, this was the foundation on which the much admired Manmohan Singh-Pervez Musharraf back-channel agreements were built.

Now, this is not azaadi. Far from it. But it is a very different concept of India to that of the BJP and the Rashtriya Swayamsevak Sangh. No doubt this is why the Prime Minister and the Finance Minister chose to attack rather than understand and explore it. But, then, what did Mr. Modi mean when he said the solution was to “embrace” Kashmiris? Surely, in practical terms, that means meeting them half-way. Or is he like Humpty Dumpty who famously said, “When I use a word it means just what I choose it to mean — neither more nor less”?

Karan Thapar is a television anchor

The new U.S. Fed Chairman is unlikely to opt for policies that might upset the President’s plan

END

Collegium and transparency

On October 3, the Supreme Court's collegium published a resolution promising to hereafter make public, on the court's website, its various decisions, including its verdicts on persons nominated for elevation as judges to the high courts, its choices of candidates for elevation to the Supreme Court, and its decisions on transfer of judges between different high courts. These results, the resolution added, will be accompanied by the reasons underpinning the collegium's choices.

At first blush, the move strikes us as both necessary and important, as bringing transparency into a system that has been notorious for its opacity. But when probed deeper, on even a bare reading of the first set of publications released by the collegium, it becomes clear that the initiative adds, at best, a veneer of respectability to a mechanism that lacks any constitutional basis.

Perplexing reasons

Consider some of the reasons professed thus far. In the cases of A. Zakir Hussain and Dr. K. Arul, candidates nominated for elevation to the Madras High Court, the collegium has *verbatim* published the following statement of rejection: "keeping in view the material on record, including the report of Intelligence Bureau [IB] he is not found suitable for elevation to the High Court Bench." The details of what the IB's reports might contain and the apparent materials on record remain concealed. Yet, threadbare as these reasons might sound, those offered for rebuffing the nomination of Vasudevan V.N., a judicial member of the Income Tax Appellate Tribunal, are particularly perplexing.

"While one of the two consultee-colleagues has offered no views about his suitability, the other colleague has not found him suitable for elevation," the report reads. "As per record, his name was also recommended by the Collegium of the Calcutta High Court on 28.11.2016 and the Government of West Bengal has expressed its disagreement. Record placed before us also shows that the proposal for his elevation initiated on a previous occasion by the Collegium of the Bombay High Court was rejected by the Supreme Court Collegium on 1st August 2013. A complaint pointing out this fact has also been received in the office of the Chief Justice of India. Keeping in view the views of the consultee judges and the material on record the Collegium is of the considered opinion that Shri Vasudevan V. Nadathur is not suitable for elevation to the High Court Bench."

More questions

The collegium, ever since its inception, following the Supreme Court's judgment in what is known as the *Second Judges Case* (1993) has been enveloped by a sense of the hugger-mugger. The present revelations, much opposed to their perceived objective, scarcely make the system more transparent. In Mr. Vasudevan's case, for example, we don't know which of the "consultee-judges (presumably one of the two senior-most Supreme Court judges, in this case, who have previously served at the Madras High Court) objected to his elevation, and why the judge interviewed found him unsuitable. Also peculiar is the collegium's express noting that Mr. Vasudevan had previously been recommended by two different high court collegia, which would mean that, in all, the chief justices of three high courts, at different points of time, found him worthy of selection. But, we're now left wondering how the view of one "consultee judge" — whose reasons aren't provided to us — can override the opinion of three chief justices of three different high courts.

These issues concerning the system employed to appoint judges to the Supreme Court and the high courts — even if they often involve matters of inscrutable procedure — are of particular salience. The judiciary, after all, was regarded by the Constitution's framers as central to the social

revolution that the document was meant to herald. Indeed, as the historian Granville Austin recounted in his book, *The Indian Constitution: Cornerstone of a Nation*, the Constituent Assembly brought “to the framing of the Judicial provisions of the Constitution an idealism equalled only by that shown towards Fundamental Rights.” It saw the judiciary as critical to “upholding the equality that Indians had longed for during colonial days, but had not gained”.

Interpreting consultation

To this end, to ensure that judges would be insulated from political influence, the assembly agreed on a consultative process of appointing judges, a “middle course,” as B.R. Ambedkar described it. The Constitution avoided the cumbersome process of legislative interference and the undemocratic provision of a veto to the Chief Justice, and vested in the President the power to both make appointments and transfer judges between high courts. The President, who would act on the advice of the council of ministers, was, however, required to compulsorily consult certain authorities, including the Chief Justice of India (CJI), and, when making appointments to a high court, the chief justice of that court.

Originally, in 1977, in *Sankalchand Sheth*’s case, when interpreting the word “consultation,” the Supreme Court ruled that the term can never mean “concurrence”. Hence, the CJI’s opinion, the court ruled, was not binding on the executive. But nonetheless the executive could depart from his opinion only in exceptional circumstances, and, in such cases, its decision could well be subject to the rigours of judicial review. This seemed like a perfectly sound balance.

And indeed, in 1981, in the *First Judges Case*, the court once again endorsed this interpretation, albeit partly. But twelve years later, in the *Second Judges Case*, the court overruled its earlier decisions. It now held that “consultation” really meant “concurrence”, and that the CJI’s view enjoys primacy, since he is “best equipped to know and assess the worth” of candidates. But, the CJI, in turn, was to formulate his opinion through a body of senior judges that the court described as the collegium.

In 1998, in the *Third Judges Case*, the court clarified its position further. The collegium, it said, will comprise, in the case of appointments to the Supreme Court, the CJI and his four senior-most colleagues — and, in the case of appointments to the high courts, the CJI and his two senior-most colleagues. Additionally, for appointments to the high courts, the collegium must consult such other senior judges serving in the Supreme Court who had previously served as judges of the high court concerned. (On whether these views of the consultee-judges are binding on the collegium or not, the judgments are silent.)

What’s clear, though, is that these dizzying requirements maintain no fidelity whatsoever to the Constitution’s text. Yet the court has been keen to hold on to this power. Indeed, when the Constitution was altered, through the 99th constitutional amendment, and when the collegium was sought to be replaced by the National Judicial Appointments Commission — a body comprising members of the judiciary, the executive and the general public — the court swiftly struck it down. It ruled, in what we might now call the *Fourth Judges* Case (2015), that the primacy of the collegium was a part of the Constitution’s basic structure, and this power could not, therefore, be removed even through a constitutional amendment.

But perhaps mindful of some of the hostility that the system was facing, the judgment also promised to “consider introduction of appropriate measures”, to improve the “collegium system”. The new resolution, it might well seem, is an effort towards this end. Unfortunately, though, the publications only serve to further underscore the deficiencies in the appointment process, which remains, as Justice P.N. Bhagwati once described it, “a sacred ritual whose mystery is confined only to a handful of high priests”.

Suhrith Parthasarthy is an advocate practising in the Madras High Court

END

Law panel moots life term for torture

Recommending life in jail for public servants convicted of torture, the Law Commission on Monday said the government should ratify a United Nations convention to tide over difficulties in getting extradited criminals from foreign countries due to the absence of a law preventing harsh treatment by authorities.

The panel also said that in case the government decided to ratify the UN convention on torture and other inhuman and degrading treatment or punishment, a Bill should be introduced in Parliament to amend various laws to prevent torture by government officials.

The draft Prevention of Torture Bill, 2017 proposed “stringent punishment” to perpetrators to curb the menace of torture and to have a deterrent effect on acts of torture.

The punishment could extend up to life imprisonment and include a fine.

The report submitted to the Law Ministry said the Criminal Procedure Code, 1973, and the Indian Evidence Act, 1872, require amendments to accommodate provisions regarding compensation and burden of proof.

Compensation favoured

It recommended an amendment to Section 357B to incorporate payment of compensation, in addition to the payment of fine provided in the Indian Penal Code.

The report, now in the public domain, said the Indian Evidence Act required the insertion of a new Section 114B.

END

‘Article 370 is only a temporary measure’

The Supreme Court on Monday adjourned for 12 weeks the hearing on petitions challenging the special status granted to Jammu and Kashmir. under Article 35A and Article 370 of the Constitution.

The writ petition filed by We the Citizens, an NGO, argues that four representatives from Kashmir were part of the Constituent Assembly involved in the drafting of the Indian Constitution and the State of Jammu and Kashmir was never accorded any special status in the Constitution.

Not a permanent tool

Article 370 was only a ‘temporary provision’ to help bring normalcy in Jammu and Kashmir and strengthen democracy in that State. The Constitution makers did not intend Article 370 to be a tool to bring permanent amendments, like Article 35A, in the Constitution, the petition added.

The plea said Article 35 A is against the “very spirit of oneness of India” as it creates a “class within a class of Indian citizens”.

Restricting citizens from other States from getting employment or buying property within Jammu and Kashmir is a violation of fundamental rights under Articles 14, 19 and 21 of the Indian Constitution.

‘Class within class’

A second petition filed by Jammu and Kashmir native, Charu Wali Khanna, has challenged Article 35A for protecting certain provisions of the Jammu and Kashmir Constitution which restricts the basic right to property if a native woman marries a man not holding the Permanent Resident Certificate.

The court has indicated that the issue of the validity of Articles 35A and 370 may ultimately be placed before a Constitution Bench of the apex court for an authoritative decision.

END

Judicial safe zones: on special deposition centres in courts

It has long been recognised that children testifying as witnesses find the courtroom experience intimidating. In many cases, they are victims themselves, and may be deterred from deposing fully and confidently in the formal atmosphere. The Supreme Court's direction that within three months there should be at least two special deposition centres under every high court's jurisdiction is a positive step towards ensuring a conducive and protective atmosphere for vulnerable witnesses. This takes forward the principle already contained in laws relating to children. For instance, the Protection of Children from Sexual Offences Act provides for child-friendly procedures during a trial. Under this law, the officer recording a child's statement should not be in uniform; also, during court proceedings steps must be taken to ensure that the child is not exposed to the accused. The court is allowed to record a child's statement through video conferencing, or using one-way mirrors or curtains. At present, Delhi has four such deposition centres, backed by guidelines framed by the Delhi High Court. The *amicus curiae* in a criminal appeal before the Supreme Court had suggested that such special centres are needed in criminal cases that involve vulnerable witnesses. The Bench, setting aside a high court's acquittal of a man accused of raping a hearing and speech impaired girl and restoring the trial court's conviction, agreed such centres are needed with safeguards.

The Delhi High Court's guidelines are inspired by the UN Model Law on Justice in Matters involving Child Victims and Witnesses of Crime. The main objectives include eliciting complete, accurate and reliable testimony from child witnesses, minimising harm, and preventing 'secondary victimisation'. Secondary victimisation, or the harm that occurs not due to a criminal act but through the insensitive response of institutions, systems and individuals, is something that vulnerable witnesses often experience in cases of sexual violence. The creation of special centres would have to imply much more than a safe space for recording the testimony of vulnerable witnesses. It should also mean that multiple depositions and hearings at which they have to be present are avoided. In particular, they should not have to needlessly wait for their turn or be subjected to procedural delays. For now, the term 'vulnerable witnesses' is limited to children, but the principle may have to be expanded to include adults who may be equally vulnerable to threats and an atmosphere of fear and intimidation. Victims of sexual violence and whistle-blowers whose testimony against powerful adversaries may endanger their lives require a conducive atmosphere to depose. Ideally, every district in the country would need a special deposition centre. The infrastructural and financial burden may be huge, but the state will have to provide for it to abide by the overarching principle of protecting vulnerable witnesses.

Rajasthan's ordinance shields the corrupt, threatens the media and whistle-blowers

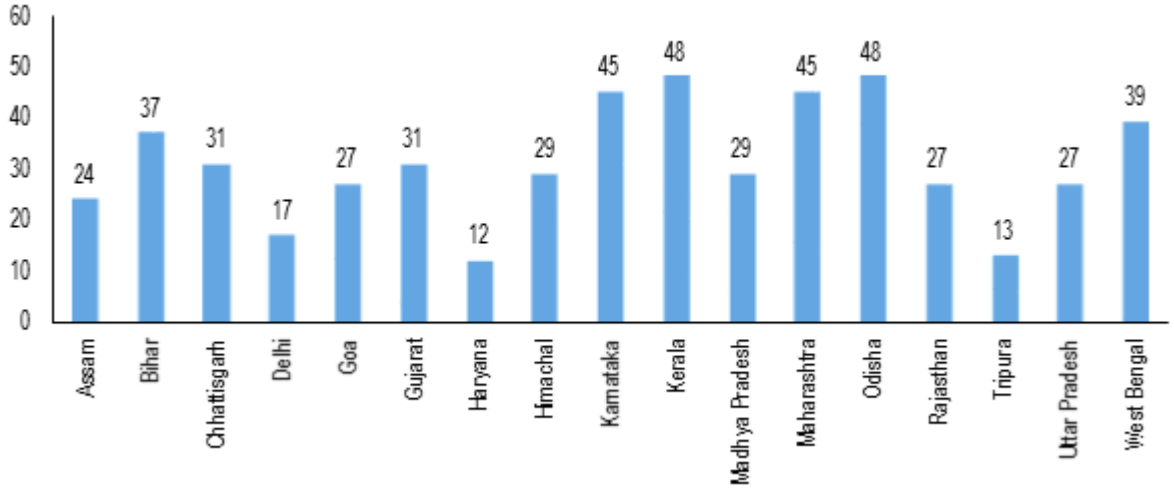
END

The Governor of Rajasthan promulgated two Ordinances amending the Code of Criminal Procedure, 1973 and Indian Penal Code, 1860 applicable in Rajasthan on September 7. The Ordinances restrain any investigation to be conducted against a judge, magistrate or public servant without prior sanction of the government. The decision to grant sanction will have to be taken within six months, failing which such sanction will be deemed to have been granted. The Ordinances also restrain any person from reporting on the individual in question until sanction for investigation is granted. Two Bills replacing these Ordinances were introduced in the Rajasthan Assembly by the state Home Minister last week, on October 23.[i] After introduction, the Bills were referred to a 15-member select committee comprising of legislators from the state Assembly, and headed by the Home Minister of Rajasthan. This blog examines the role of committees and some of the practices observed in state legislatures.

Purpose of committees in legislatures

In India, state legislatures sit for 31 days a year on an average.* Several Bills are passed within a few days of their introduction. One of the primary responsibilities of the legislature is to hold the executive accountable, and examine potential laws. Due to paucity of time, it is difficult for the members go through all the bills and discuss them in detail. To address this issue, various committees are set up in Parliament and state assemblies where smaller group of members examine Bills in detail, and allow for an informed debate in the legislature. Apart from scrutinising legislation, committees also examine budgetary allocations for various departments and other policies of the government. These mini-legislatures provide a forum for law makers to develop expertise, engage with citizens and seek inputs from stakeholders. Since these committees consist of members from different parties, they provide a platform for building consensus on various issues.

Figure 1: Average sitting days in a year (2012-16)



Sources: Website of various state assemblies as on October 30, 2017.

Types of committees

There are broadly three types of committees: (i) Financial committees: These scrutinise the expenditure of the government and recommend efficient ways of spending funds (example: Public Accounts Committee and Estimates Committee), (ii) Department-Related Standing Committees (DRSC): These scrutinise performance of departments under a ministry, (iii) Other committees: These deal with day-to-day functioning of the legislature (example: Business Advisory Committee,

Papers Laid, Rules, etc.) While there are 3 financial committees and 24 department related committees in Parliament, the number of committees in state legislatures varies. For example, Kerala has 14 subject committees examining all departments, while Delhi has seven standing committees scrutinising performance of various departments. [ii],[iii] However, not all states have a provision for specific DRSCs or subject committees.

Similar to Parliament, state legislatures also have a provision to form a select committee to examine a particular legislation or a subject. Such a committee is disbanded after it presents a report with its findings or recommendations. Several Bills in states are referred to select committees. However, the practice in some state legislatures with respect to select committees deviate from those in the Parliament.

Independence of select committee from the executive

The rules in several states provide for the minister in-charge piloting the bill to be an ex-officio member of the select committee. These states include Rajasthan, Assam, Andhra Pradesh, Chhattisgarh, Telangana. Moreover, in Manipur, the rules provide for the minister to be chairman of the select committee. Note that the minister is part of the executive. His inclusion in the committee may be in conflict with the committee's role of scrutinising the functioning of the executive.

The practice of including ministers in committees is in contrast with the protocol followed in Parliament where a minister is not part of any DRSC or select committee. As committees of the legislature hold the executive accountable, having a minister on the select committee undermines the role of legislature as an oversight mechanism. A minister, as a representative of the executive being part of such committees may impede the ability of committees to effectively hold the executive accountable.

The two Bills introduced in the Rajasthan Assembly last week were referred to a select committee headed by the Home Minister of the state. There have been several instances in other state legislatures where the minister introducing a bill was chairman of the select committee examining it. In Goa, a bill empowering the government to acquire land for development of public services is headed by the Revenue Minister of the state.[iv] Similarly, in Arunachal Pradesh, the select committee examining a bill for establishment of a university was headed by the Education Minister.[v] In Maharashtra as well, the Education Minister was chairman of the select committee scrutinising a bill granting greater autonomy to state universities.[vi] For rigorous scrutiny of legislation, it is essential that the committees are independent of the executive.

Strengthening state legislature committees [vii]

The functioning of committees in states can be strengthened in various ways. Some of these include:

(i) Examination of Bills by assembly committees: In the absence of DRSCs, most bills are passed without detailed scrutiny while some bills are occasionally referred to select committees. In Parliament, bills pertaining to a certain ministry are referred to the respective DRSCs for scrutiny. To strengthen legislatures, DRSCs must examine all bills introduced in the assembly.

(**ii) Scrutiny of budgets**: Several states do not have DRSCs to examine budgetary proposals. Some states like Goa, Mizoram and Arunachal Pradesh have a budget committee to examine budget proposals. Post the 14th Finance commission, there is a higher devolution of funds to state governments from the centre. With states increasingly spending more, it is necessary for them to have DRSCs that scrutinise the allocations and expenditures to various departments before they

are approved by state assemblies.

*Based on the average sitting days for 18 state assemblies from 2012-2016.

[i] The Code of Criminal Procedure (Rajasthan Amendment) Bill, 2017 http://www.rajassembly.nic.in/BillsPdf/Bill39-2017.pdf;The Criminal Laws (Rajasthan Amendment) Bill, 2017 http://www.rajassembly.nic.in/BillsPdf/Bill38-2017.pdf.

[ii] List of subject committees http://niyamasabha.org/codes/comm.htm.

[iii] Delhi Legislative Assembly National Capital Territory Of Delhi Composition Of House Committees
2017 – 2018, http://delhiassembly.nic.in/Committee/Committee_2017_2018.htm.

[iv] The Goa Requisition and Acquisition of Property Bill, 2017 http://www.goavidhansabha.gov.in/uploads/bills/468_draft_BN18OF2017-AI-REQUI.pdf.

[v] The Kameng Professional and Technical University Arunachal Pradesh Bill 2017 http://www.assamtribune.com/scripts/detailsnew.asp?id=oct1717/oth057.

[vi] Maharashtra Public Universities Bill, 2016 http://mls.org.in/pdf/university_bill_english.pdf.

[vii] Strengthening State Legislatures http://www.prsindia.org/uploads/media/Conference%202016/Strengthening%20State%20Legislatures.pdf.

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Speed up trial of politicians, says SC

On March 10, 2014, a Supreme Court Bench of Justice (retired) R.M. Lodha and Justice Kurian Joseph had ordered the government to conclude criminal trials in which charges have been framed against sitting MPs and MLAs “speedily and expeditiously” within a year.

The apex court had ordered the trials to be held on a day-to-day basis.

Only “extraordinary circumstances” would justify a trial exceeding the one-year deadline, Justice Lodha’s Bench had made it clear then.

Referring to the March 2014 order, Justice Gogoi’s Bench said it wanted the government to report back by December 13 on how many of these 1,581 cases were finally decided and how many ended in acquittals and convictions for MPs and MLAs.

The court further directed the Centre to place on record how many cases have been filed against sitting and former legislators between 2014 till date. The apex court said it wanted details of the status of each such case and how the criminal trials ended in every one of them.

Additional Solicitor General A.N.S. Nadkarni, for the Centre, submitted that the Centre was not averse to the setting up of special courts to exclusively try political persons.

He said there was no room for a second opinion that corruption and criminality should be wiped out of politics.

Mr. Nadkarni said the government would support any move for the “utmost expeditious disposal” of criminal cases involving political persons.

However, on a plea by petitioner and Supreme Court advocate Ashwini Kumar Upadhyay for a life ban on convicted politicians from contesting elections, the government remained non-committal, simply saying that the recommendations of the Law Commission and the Election Commission (EC) were under its active consideration.

END

Tackling fake news

Indians and the ‘Indian National Anthem’ being adjudged the best by UNESCO is probably the most common fake news going around the Internet. While this false information may have been innocuous, it captures the larger menace we face today. With the advent of new age digital and social media, fake news has pervaded all spheres of life, political and social.

Claire Wardle of First Draft, a UK-based non-profit organisation which is now part of the Shorenstein Center on Media, Politics and Public Policy at Harvard, categorised misinformation into seven categories, namely satire or parody, misleading content, imposter content, fabricated content, false connection, false content and manipulated content.

While all these forms exist in India, fabricated and manipulated content are gaining steam, leading to the possibility of potential violence and impacting society. The rise of digital and social media as powerful platforms has only magnified the effect of fake and false news. Umpteen number of news/information portals are being set up as there are few entry barriers unlike in the traditional media. In addition, growing polarisation of society on ideological lines has made the job of spreading fake news easier. Content that denigrates leaders/groups of the opposite ideology based on falsehoods, deepens communal polarisation or incites hatred have gained traction in the last few years. In the past, communal violence in India was a localised affair. Today, it is extensively being fed and triggered through the Internet. Provocative content, inaccurate information, doctored videos, and pictures are being disseminated through various online and mobile platforms. The platforms serve like nodal agencies distributing unverified information.

While media researchers around the world are investigating the fake news scene, little credible information is available on the creators and the intention behind it. But if what has been found is true, it is purely a way to make advertising money through click baits, enticing people to click and continue reading, and is organised by political or other social groups. In India, numerous sites are set up to peddle fake news with click bait headlines. They are also very well organised with multiple linked pages on social media platforms that are used to make the content go viral.

Both Google and Facebook, as the largest platforms for content distribution, are said to be creating systems that will filter fake news. But these efforts are relatively new. The biggest vector of fake news in India — WhatsApp — is still grappling with compromising mechanisms for privacy like encryption and the urgent need to weed out fake news spread through its application.

The advent of fake news is not new or recent, only its potential to reach people has amplified due to online platforms and applications that are free. Users creating hate content and sharing it can be booked under relevant sections of the Indian Penal Code (IPC). But the sheer expanse of the Internet and the anonymity it grants makes it difficult to track down people. Unlike mainstream media that falls under comprehensive regulation, online platforms have scope for wrongdoing due to the lack of binding rules, and the ability to keep owners and editors private like in the case of fake news sites. In the absence of such crucial information, there is no understanding of the liability and the credibility of the information that is being hosted on their respective sites. This is the main strength of the creators of fake news, the ability to remain anonymous in the guise of a media outlet. Most digital media outlets do not have basic information regarding editors, publishers or the physical address of the registered entity. We could do well to begin with some basic regulation for digital media outlets like compulsory and online registration of details.

In the past few months, people have been booked in isolated incidents in different States for the content they shared on messaging and social media platforms. On some occasions, the Internet has been shut down on the pretext of inciting violence and to stop the spread of doctored videos.

But treating every symptom in a localised way is not an efficient or productive way to tackle the disease.

The lack of uniform guidelines, regulation and policy regarding such fabricated content needs to be addressed urgently. Considering the rapid penetration of mobile phones and the rise in use of social media in India, the dissemination of fake news is no longer a problem limited to the online world, especially because it has political, social and economic ramifications on the ground.

Rakesh Reddy Dubbudu and Tejeswi Pratima Dodda head a Fact Checking initiative, Factly

The new U.S. Fed Chairman is unlikely to opt for policies that might upset the President’s plan

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Naga peace can’t happen without NSCN-K

The Naga peace process, Eastern India’s most anticipated political show, has in the past couple of weeks added several important dimensions.

I hear of a move to have all 12 of Nagaland’s council of ministers in New Delhi for a meeting with Prime Minister Narendra Modi, to fast-track a satisfactory conclusion to the matter at the very latest before February 2018. This would be just in time for elections to that state’s assembly and could pre-empt policy being affected by the Election Commission’s model code of conduct.

It would, of course, be lovely if Nagaland’s politicians made a grand gesture to include in the formal power structure Naga rebels who, for all the heartburn about their strong-arm tactics, extortion, and “taxation”, occupy a special place in many Naga hearts and minds. There’s the wonderful example of Mizoram’s Congress chief minister Lal Thanhawla stepping aside to accommodate rebel leader Laldenga of the Mizo National Front in the wake of a peace deal in 1986 overseen by Prime Minister Rajiv Gandhi.

There has been some talk of a similar move. In June 2016, at a meeting in Kohima, all 60 legislators of Nagaland and its two members of Parliament put aside major political and tribal differences to “put pressure” on the Indian government and the Isak-Muivah faction of National Socialist Council of Nagalim, or NSCN (I-M), the largest Naga rebel group with which the government signed a framework peace agreement on 3 August 2015, to speed up the process. They even resolved to give up their seats to absorb rebel leadership into the political mainstream. This mirrored an earlier move by Nagaland’s legislators in mid-2012.

If this works, it would be nothing short of stunning, and it is hardly a matter of kite flying. As I have written earlier, it mirrors the desire of the Naga people to formally end conflict, overcome a history of a genocidal war India waged against them, and seek an equitable future of peace and prosperity.

The issue is, of course, overcoming major hurdles both among the political and rebel establishments. S.C. Jamir, for many years the Congress chief minister—and more recently an itinerant governor to various states—has never hidden his ambition to once again rule Nagaland, though he is reviled in particular by NSCN (I-M). He has a competitor Nagaland’s current chief minister, T.R. Zeliang, a canny political player who muscled his way back to power in July this year after a half-year hiatus; and is a favourite among Modi’s courtiers, in particular Bharatiya Janata Party’s president Amit Shah and Ram Madhav—the party’s general secretary who retains great personal interest in North-East Indian affairs. The third player is Neiphiu Rio, a former chief minister who is, like his former protégé Zeliang, a power-player. Though Zeliang and Rio, a Lok Sabha MP, are currently ranged on the same political side, it’s on shaky ground.

Rebel territory is as charged. I-M last year made a great departure from its norm when Rh Raising, the home minister—kilo kilonser—of its proclaimed administration, Government of the People’s Republic of Nagalim, or GPRN, welcomed other competing rebel groups to the peace dialogue. Raising paraphrased other leaders when he invoked the spirit of reconciliation: “… to forgive our mistakes,” he said, “as we have also forgiven their mistakes.”

As if in agreement, more than a year later, on 26 September R.N. Ravi, interlocutor for the Naga peace process, met members of six rebel groups, including smaller factions of NSCN as well as remnants of Naga National Council, in the 1950s the fount of Naga resistance and rebellion. When Ravi visited Dimapur to hold talks with these groups, Naga tribal bodies and civic groups accorded him a massive reception at the airport.

That was unprecedented, but so is a lot happening in the peace process. These are far smaller and less influential groups than NSCN (I-M), but important from the comprehensive perspective a peace process must necessarily hold. The inclusion of these groups helps to carry both the credentials of past struggles as well as their membership that spreads across several Naga tribes, always an important emotional content when dealing with matters in Naga homelands.

But there remains NSCN-K or the Khaplang faction, the largest and most influential group after I-M, and at war not just with India but all other groups, in particular I-M. There can be no peace without K on board, and that game is unfolding rapidly, interestingly. More on that next week.

Sudeep Chakravarti's books include Clear.Hold.Build: Hard Lessons of Business and Human Rights in India, Red Sun: Travels in Naxalite Country *and* Highway 39: Journeys through a Fractured Land. *This column, which focuses on conflict situations and the convergence of businesses and human rights, runs on Thursdays.*

Respond to this column at rootcause@livemint.com

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Tribunals should help lighten the judicial burden

A law commission report submitted this week says that the top five central tribunals in India have more than 3.50 lakh cases pending before them. The Income Tax Appellate Tribunal alone is scheduled to consider 91,000, the report says. Although the disposal by the tribunals in relation to the cases filed every year has been high at 94%, the pendency is worrisome. The Customs, Excise and Service Tax Appeal Tribunal, too, had 90,592 pending cases at the end of 2016. The role of the tribunals is spelt out clearly in the country's justice mechanism: to overcome delays in dispensation of justice by regular courts. By dealing with disputes related to the environment, the armed forces, tax and administrative issues, they are meant to take some of the load off India's overburdened courts. Clearly, that isn't happening at the necessary pace.

The judiciary-citizenry gap in India isn't new. The country has just 18 judges for every million people. The United States, by comparison has a judge-to-population ratio of 107 judges for every million people. There are six vacancies for judges in the Supreme Court. The number of vacancies for judges in the High Courts stands at 400. In the lower courts, the shortfall is 5,000 judges. A Law Commission report in 2009 observed that it would take 464 years to clear the arrears with the present strength of judges. Still, just adding more judges may not be the only answer. One of the solutions being mooted by the law panel to reduce the number of pending cases is to ensure that the orders of the central tribunals are not challenged in the Supreme Court directly. The Central Administrative Tribunal, for instance, should be the last word on matters related to service conditions, without any scope for appeal. Similarly, tax matters should get closure at the offices of the Income Tax Appellate Tribunal itself rather than stretching for years together and leading to wasteful expenditure and eating into the precious time of the apex court.

Better court management will help. Although the Code of Civil Procedure recommends that the number of adjournments in one case be capped at three, it is routinely flouted. Since 'absent-counsel' is the reason for two-thirds of delayed cases, an answer could be for the registry to ensure cases involving the same lawyer are not listed too close together. Truant lawyers can be fined if they don't turn up for hearings. Another possible solution could come from the government itself. The central and state governments are the biggest litigants in the country. If the State could slash its own burden of litigation, it may help the overstretched judiciary streamline its operations.

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Delhi LG cannot sit on State schemes: SC

Mr. Subramanium alleged that the LG has misused the discretion in this proviso to block governance to such an extent that decisions from appointment of teachers in municipal schools to opening of mohalla clinics have been pending for over a year. The Chief Secretary and other officers simply forward the files to the LG, where it remains indeterminately.

“LG thinks he is suprema lex (supreme law) on six grounds. One, that Delhi is still a Union Territory. Two, Parliament makes the law for Delhi under Article 246 (4) of the Constitution. Three, Article 239AA has brought in no change to Delhi’s status as a Union Territory simpliciter. Four, the proviso gives him the power of defiance. Five, he has to concur to every decision made by the Delhi government. Six, he can take independent decisions. Now, did the 69th Constitutional Amendment contemplate two parallel governments like this?” Mr. Subramanium asked.

He submitted the proviso envisaged a “great confidence” to evolve between the Chief Minister and the LG. “But how can there be confidence when the LG holds meetings with government officers without the Chief Minister?” Mr. Subramanium asked.

“So, in daily governance and implementation of laws, LG says he is your boss,” Justice A.K. Sikri remarked from the Bench.

“It would have been allright if he had said just that. He is actually saying that we do not count,” Mr. Subramanium responded.

In his day-long submissions before the Bench, Mr. Subramanium said the situation of governance in Delhi had come to such a turn that “department ministers are unable to get an opinion from their secretaries and civil servants on issues of governance.” “They have to literally fall at their feet,” Mr. Subramanium submitted.

Limited to specific cases

He argued that the “extraordinary discretion” of the LG is confined to special circumstances. At this point, Chief Justice Misra agreed that the “difference of opinion” between the LG and the Delhi government should be “authentic.”

The senior advocate submitted that the purpose of Article 239AA was to “provide some kind of voice to the people, some kind of governance to the people.” The amendment was not just a structural addition to the Indian Constitution, but based on egalitarianism.

“We are not contesting parliamentary supremacy. We acknowledge it. But still there must be an elbow room for the Legislative Assembly of an elected government to function...Everything we do does not require the concurrence of the LG,” Mr. Subramanium submitted.

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The People Are Ready

As we move towards celebrating the anniversary of demonetisation, that was laced with a dose of GST, we notice that no amount of reform or modification ever converted a candle into a light bulb. For that to be possible, advances in technology are needed as also a desire to use it. The absence of any one of these would have resulted in the continuing domination of the candle to the detriment of light bulbs. It is an increase in efficiency, which is the key generator of wealth. In India it becomes worrisome when sensible people say it is not possible for small and medium enterprises (SMEs) to pay taxes and still remain viable — in short, it is impossible for these players to be more efficient.

Such pessimism is unjustified. It is based on two faulty premises: One, Indians are fundamentally corrupt and inefficient. Hence, any attempt to achieve a quick transition to a more organised economy is doomed to fail; and two, Indian businesses have a low turnover and hence prefer cash transactions.

A 2014 survey by CII on the use of information and communication technology (ICT) in the SME sector found that 83 per cent of SMEs use ICT for finance and accounting, 75 per cent use it for HR and administration functions, 68 per cent for marketing and sales, and 64 per cent for production purposes. The same survey also said that IT-enabled SMEs grew on an average 15 per cent faster than others. Normal wisdom would say that people do learn from each other.

Normal wisdom also says if small enterprises are using ICT so much and yet do many of their transactions with cash at the same time, it is not because they feel intimidated by technology. A survey of Delhi and Meerut (urban and rural) by researchers associated with Tufts University in 2014 threw up the finding that 97 per cent of those who used only cash, owned LED/LCD or plasma televisions. Only 8.7 per cent of the cash users perceived themselves to be poor and 90 per cent saw themselves as being from the lower middle class or middle class.

If so many enterprises — the shoe repairman, the cycle repairman, the roadside barber, the local doctor and dentist, the local grocer to list a few — still use cash, the likely reason is that the option to get by with cash is available, because they wish to save on tax and because financial institutions are not perceived to be as friendly as informal credit sources. They would rather not do the paperwork than formalise their business. This sort of jugaad economy is not something of which we should be happy.

What the government needs to focus on now is to increase efficiencies in the tax system so that the paperwork takes less time. So far as farmers and rural areas are concerned, they have merely slipped back to a tradition of working on credit that they have practised for centuries. Here, too, times are changing. We recall a time 20 years ago, living on rent in a house in a five-acre grape farm in a hilly tribal area in the backwoods of Nashik district. The landlord had been missing for some days. So when we saw him again, we inquired with some concern where he had been. He replied happily that he had been selling grapes in Paris. How did he manage this since he was just a matriculate? He explained in a matter-of-fact way that he had hired an accountant for the purpose.

People in India today are willing to move on to a digital world. The government would simply need to lower the costs of digital transactions and inform them of the benefits.

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Trying politicians: on setting up special courts

The Supreme Court's order directing the Centre to frame a scheme to establish special courts exclusively to try cases against politicians marks another milestone in the higher judiciary's continuing campaign to cleanse politics of the taint of crime. The court has handed down many rulings that make legislators and holders of public office accountable for corruption. In recent years, it has grappled with the disturbing phenomenon of criminals entering the electoral fray. In a landmark verdict in 2013, the court removed the statutory protection for convicted legislators from immediate disqualification; and in 2014, it directed completion of trials involving elected representatives within a year. The court is now keen on establishing a time-bound and exclusive judicial mechanism to expedite trials involving "political persons". The order requires the Centre to provide details of the funding necessary to set up special courts, and indicates that State governments be involved in the exercise. True, cases involving offences by serving or past legislators move rather gingerly in the present criminal justice system. It is apparent that those with political influence have taken full advantage of its inherently languid nature by delaying hearings, obtaining repeated adjournments and filing innumerable interlocutory petitions to stall any meaningful progress. A few prominent leaders have been successfully tried and sentenced, but these are exceptions rather than the rule. For influential politicians, a criminal prosecution is no more than a flea bite; and, sometimes, even a badge of victimhood that redounds to their electoral benefit.

However, establishing special courts may not be the ideal way to expedite cases. From the viewpoint of the accused, the idea could smack of victimisation and engender a feeling of being chosen for discriminatory treatment. There is already a provision for special courts to try various classes of offences. For instance, corruption, terrorism, sexual offences against children and drug trafficking are dealt with by special courts. However, creating a court for a class of people such as politicians is discriminatory. While corruption charges against public servants are being handled by special courts, it is a moot question whether there can be special treatment for offences under the Indian Penal Code solely because the accused is a politician. A possible legal and moral justification is, of course, available. It is in the public interest to expedite cases in which those in public life face serious charges. It would be primarily in their own interest to clear their names quickly, lest their candidature be tainted. Also, the earlier order for completion of trial within one year appears to have had no significant impact. Special courts may indeed address these issues, but the ideal remedy will always be a speedy trial in regular courts. If only the routine criminal process is pursued with a universal sense of urgency, and if enough courts, judges, prosecutors and investigators are available, the expediency of special courts may not be needed at all.

Congress needs a cohesive agenda if it wants to push back the BJP in PM Modi's home State

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Gathering the tribe

Perhaps one of the most talked about issues as far as the Northeast is concerned is the Naga struggle for sovereignty which started a day before India's Independence. In the Naga mind, this issue oscillates between nostalgia for its unique history and the promise of a better future without disturbing this irreplaceable past. The problem with reality is that it does not allow us to romance the past.

The Naga national workers are no longer in the prime of their lives. The chairman of the National Socialist Council of Nagaland (I-M), Isak Chisi Swu, has passed away and Thuingaleng Muivah too is getting on in years. In an article, 'The Presence of the Past', Roger Cohen says, "As we grow older the past looms larger. The past is full of possibilities. The future may seem wan by comparison and, for each of us, we know where it ends. With a bang or whimper..."

Reams have been written, several seminars and workshops organised, and there have been daily cogitations on the Naga peace talks since they started in 1997. In August 2015, when the Framework Agreement was signed between the Government of India and the NSCN (I-M), expectations were high that an "honourable settlement" was in the offing. The problem is with the use of words which lend themselves to several interpretations depending on who the stakeholders are. What is honourable for the NSCN(I-M) may not seem honourable enough to Naga society as a whole, with disparate aspirations and interpretations. Be that as it may, the Centre's Interlocutor for the Naga Peace talks, R.N. Ravi, has taken on a formidable task.

No other interlocutor has interacted with and met so many Naga National Political Groups (NNPGs) and civil society groups. For the first time, Mr. Ravi was able to push the envelope and create that integral space where all voices are heard with equal respect, sometimes at the risk of the NSCN (I-M) calling off the talks, since they felt that being signatories to the Framework Agreement, they alone have the right to call the shots. This fact needs to be appreciated. And it has to be understood that the Indian establishment too is not an easy customer. There is scepticism and there are doubts whether wider consultations would result in cacophony, making the task of arriving at a solution much more difficult.

For the interlocutor it's a tightrope walk. The Naga people are a proud race and have held fast to their cultures, traditions and language. Yet it cannot be denied that tribal loyalty often comes in the way of a collective discourse for the future of Nagaland. Perhaps one organisation that has brought together people from all tribes is the ACAUT (Against Corruption and Unabated Taxation), which is seemingly inclusive of all tribes and a mass movement of sorts to protest against taxation by different armed groups and factions. So far, about 33 delegations, including the different tribal Hohos and recently the six NNPGs, have had their say. For Mr. Ravi, it is an opportunity to further understand how the Framework Agreement should pan out.

But Mr. Ravi's visit to Dimapur last month was also seen with some scepticism. A video clip of the public reception given to him drew some uncharitable comments. Is the pent-up rage and frustration among the youth due to the protracted peace talks or does the rage spring from something else?

For the Naga people at this juncture, the most pragmatic step is to take a balanced view of the past. Obsession with one point of view hinders any kind of progress. With 16 major tribes, each with a sense of nationality of its own and every tribe having its village republics which is a crucial part of their culture, there will be divergent 'national' narratives. Naga nationalism is both a sentiment and a movement.

Ethnic boundaries of yore which went beyond geopolitical borders of the present nation can be both problematic and defy pragmatism. Then there is the issue of the Indian nation state, a term that is also problematic but which has provided its own stability for 70 years. If one were to go by Benedict Anderson's "Imagined Communities", then all the communities of the Northeast fall in that ambit.

In an interview to the Nagaland Post, Mr. Ravi said the ongoing peace talks may have been initiated by the NSCN (I-M) but it has now become more inclusive. One ray of hope as far as the Framework Agreement is concerned is that there appears to be a political consensus and faith in the process. This in itself is a huge step forward. Now that the tribal Hohos and the NNPGs have all thrown in their support, there is hope that the much-awaited political solution will arrive sooner than later.

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The definition of harassment needs to be constantly updated, and the process for justice made more robust

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The Swachh marathon

The momentum and scale of the Swachh Bharat Mission-Gramin (SBM-G) is unprecedented. Since the launch of the programme by the prime minister in October 2014, there has been an astonishing acceleration in the construction of toilets, with five crore built in three years. The scale and complexity facing the SBM-G make it, we believe, more challenging than any other rural development programme in the world. Driven forward with impressive leadership and dynamism, shortcomings are inevitable and rapid learning and adjustments vital and imperative for sustainable success.

With this in mind, a day-long meeting on October 10 in Delhi of representatives of government, international agencies, NGOs, consultants and researchers shared findings and lessons from methods for rapid learning relevant for the SBM-G. This led to ideas about how to tackle concerns that had come to light. Three burning issues stood out: Technical realities and what people know; their beliefs and behaviour; and unfinished business, especially concerning those who are poorer, marginalised and left behind.

The preference for septic tanks remains deeply rooted and widespread. People believe they are better than the recommended more sustainable and economic twin pits because they are big and will take longer to fill, and, used sparingly, may even never have to be emptied. Due to widespread ignorance of technical details, many septic tanks are not built according to the guidelines, and end up contaminating the environment and damaging public health.

Twin leach pits have much in their favour. For a few years, human waste flows to the first pit. Once full, it is left to become manure while new waste is diverted into a second pit. The first pit is emptied and the cycle starts again. This technology allows time for the waste to compost and become harmless, odourless and valuable fertiliser. However, rapid investigations found many people who had had twin pits constructed for them without any explanation of how they work. They lacked a sense of ownership and believed the pits would fill up fast. In consequence, they were using them only some of the time, continuing open defecation (OD) even in villages with 100 per cent toilet coverage.

This problem is acutely urgent. A recent rapid survey covering over a thousand households found that the proportion of twin pits being built in SBM is declining, and more and more unsustainable single leach pits are being built, especially among Scheduled Castes and Tribes.

The solution is to empower people through knowledge. Few rural people are aware of technical details or convinced by the advantages of twin pits. Mason training can help, but the major thrust needed is a massive communication campaign to inform all villagers of the technical options and details, what they are entitled to demand in quality and quantity of materials, and how to ensure masons do a full job, so that they are never be short-changed with single pits or substandard construction.

Partial usage of toilets, when some household members continue to defecate in the open, was confirmed to be widespread. In addition to fear of pits filling up, water availability was a major factor, both in drier areas and elsewhere. Gender plays a part too: Women are the main fetchers of water and cleaners of toilets. One flush of a toilet takes many times more water than does the lota for cleansing when defecating in the open.

Men are the main open defecators. There can be a macho element, a preference for the open air, and an element of chivalry. This is reinforced by conventional campaigns which stress women’s dignity and needs: Men are considerate if they leave the toilets to women, so also minimising

water use and the rate at which the pit will fill.

One rapid study discovered effective ways of changing men's behaviour — groups of older women influencing men to adopt toilets when they go for OD. The study suggests that similar gentle and positive approaches should be promoted.

One rapid review confirmed that for health and nutrition benefits the proportion of coverage and use remain important. SBM-G verifications and several studies indicate that in practice 70-90 per cent coverage is often taken as acceptable for a declaration of open defecation free (ODF). There is no definite evidence on thresholds for coverage and use, but health benefits and nutrition indicators might rise more steeply as usage approaches 100 per cent. Furthermore, there are many benefits of total toilet use beyond health.

Moreover, those in the remaining 10-30 per cent without toilets are predominantly the marginalised and disadvantaged — OBC, SC, ST, the very poor, sick, disabled, aged and weak, or living in difficult or remote areas. For them, additional efforts and special policies and provisions are needed.

Declaration and verification of ODF is a milestone. Beyond ODF lie many challenges — children's poo, handwashing, rural faecal sludge management, solid and liquid waste management, and toilets that need upgrading, to name but a few. Rapid learning, sharing and adapting will be vital not just in the next two years but far beyond 2019. There is no last mile. The scale of the achievements and milestones passed over the past three years far surpass anything we believed conceivably possible. The rapid learning and reviews in the October 11 meeting confirmed that achieving a fully Swachh Bharat is not a sprint but a marathon, and that rapid learning, if acted on effectively, should speed progress and enhance sustainability.

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A quicker justice

On Wednesday, the Supreme Court asked the Centre to set up special courts to try criminal cases against MPs and MLAs. Though the apex court has suggested special courts to try lawmakers several times in the past two years, including in September, this is the first time it has given explicit directions to constitute such courts. A two-judge bench gave the Centre six weeks to put in place a scheme to “set up courts on the lines of fast track courts”. The bench reasoned that the backlog of cases before the judiciary made it difficult for courts to give speedy verdicts in cases involving politicians.

There is scarcely any doubt that the country’s political system requires an urgent clean-up. The Second Administrative Reforms Commission (2005) had noted that the “opportunity to influence crime investigations and to convert policemen from being potential adversaries to allies is the irresistible magnet drawing criminals to politics.” The situation seems to have worsened more than a decade later. According to the Association for Democratic Reforms, more than a third of the members of the current Lok Sabha have criminal cases against them. Another report by this organisation notes that more than 50 lawmakers in the country face charges of crimes against women. Candidates’ criminal reputation is often perceived as an asset in an election. On Wednesday, the SC said “it take years, probably decades, to complete a trial against a politician. By which time, he would have served as a minister or legislator several times over”. There is, then, a case for expediting proceedings in criminal cases against lawmakers. But are fast track courts the right instruments for this purpose? The country’s experience with such courts indicates otherwise. According to the response to an RTI petition filed two years ago, more than 50 per cent of the fast track courts were not functioning. According to the Department of Justice, more than 6.5 lakh cases are pending in fast track courts in the country, about 1,500 of them in Delhi. Without adequate infrastructure and qualified judges, many of the fast track courts are ill-equipped to deal with such a huge volume of cases.

Given the shortage of judges in the country, fast-tracking criminal cases against lawmakers will inevitably mean slowing down the pace of other litigation. At the same time, with deadlines hanging over their heads, the judges will be under pressure to process evidence without due consideration. Rulings will inevitably be challenged, defeating the purpose of setting up these courts. The SC should re-think its directive to the Centre — and both should find other ways to speed up proceedings in criminal cases against politicians.

END

Acting against torture

Students along with SICHREM members taking part to observe the UN International Day in Support of Victims of Torture. File | Photo Credit: K. Murali Kumar

“Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also such intangible that there is no way to heal it”. The Supreme Court reproduced the words of Adriana P. Bartow in its *D.K. Basu* judgment to explain the negative effect of torture on human dignity.

The Law Commission of India in its 273rd report has proposed a new anti-torture law, the Prevention of Torture Bill, 2017, which provides a wide definition to torture not confined to physical pain but also includes “inflicting injury, either intentionally or involuntarily, or even an attempt to cause such an injury, which will include physical, mental or psychological”.

The Commission has suggested India’s ratification of the UN Convention Against Torture. The proposed standalone anti-torture law directly makes the state responsible for any injury inflicted by its agents on citizens. Under it, the state shall not claim immunity from the actions of its officers or agents.

The recommendation of the Commission headed by former Supreme Court judge, Justice B.S. Chauhan, will allow human rights advocates to pressurise the government to recognise torture as a separate crime. So far, neither the Indian Penal Code nor the Code of Criminal Procedure specifically or comprehensively addresses custodial torture.

Though India had signed the UN Convention against Torture in 1997, it is yet to ratify it. Efforts to bring a standalone law against torture had lapsed. The National Human Rights Commission has been urging the government to recognise torture as a separate crime and codify punishment in a separate penal law.

Recently, while hearing a PIL filed by former Union Law Minister Ashwani Kumar, the Supreme Court had described torture as an instrument of “human degradation” used by the state. It was after the scathing remarks that the government had referred the question of a law on torture to the Law Commission.

The Commission has asked the government to ratify the UN convention to tide over the difficulties faced by the country in extraditing criminals. The draft Bill has recommended punishment for torture ranging from fine to life imprisonment. In case a person in police custody is found with injuries, it would be “presumed that those injuries have been inflicted by the police”.

The Bill proposes to give the courts the scope to decide a justiciable compensation for a victim, taking into consideration his or her social background, extent of injury or mental agony.

The definition of harassment needs to be constantly updated, and the process for justice made more robust

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Ensuring swift justice to elected officials will help deter corruption

It is a significant step in the fight against corruption. The Supreme Court has suggested the creation of special courts to deal with criminal cases against politicians. According to an analysis conducted by the Association for Democratic Reform, based on self-sworn affidavits obtained from the Election Commission of India website, of the 542 winners analysed after the Lok Sabha elections of 2014, 158 members (34%) declared criminal charges against them; and 112 (21%) had serious criminal cases against them. Ten of these were murder cases. In the upcoming Himachal Pradesh elections, of the 338 candidates analysed, 18% face criminal cases, and 9% currently face serious criminal charges.

The rationale behind the apex court's move is that the longer political functionaries with charges against them stay in office, the more chance they have to manipulate the system. The only way to tackle this, since political parties are not averse to giving tickets to those against whom charges have not been proven, is to lessen the judicial delays in concluding cases. As it stands, a member of parliament or a state assembly found guilty of a criminal offence punishable with two years or more in jail immediately loses the membership of the house. The court's 2013 judgment also bars a convicted politician from contesting elections for six years from the date the sentence ends.

Banning convicted politicians from contesting elections forever is not the solution to the problem. In a reformative justice system, a conviction means that adequate punishment has been meted out; people who have fulfilled the punishment must be considered to have paid their debt to society. Once that debt is paid, the individual in question must be considered fit and ready to rejoin society. And if convicted politicians are able to win the trust of their electorate after their stipulated punishment, their candidature must not be invalidated.

If the resolution of cases were swifter, those guilty of corruption or other criminal charges could be taken out of the political system, albeit temporarily. This would be a positive step towards cleansing it. A special court to hear and complete cases involving elected representatives would also act as a deterrent to corrupt politicians who rely on the slowness of the judicial system to get away with subverting the law. This also emboldens them to convey the message that they are somehow floating above the fray on account of their power and privilege unlike the average Joe.

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Financial Assistance of Rs 2,302.05 Crore for Projects under Coastal Berth Scheme of Sagarmala

Scope of Coastal Berth Scheme expanded to cover DPR preparation

The Ministry of Shipping has taken up projects worth Rs 2,302 crore for financial assistance under the Coastal Berth Scheme of the flagship Sagarmala Programme. The Ministry, after due appraisal in consultation with NITI Aayog and Department of Expenditure, has extended the period of the scheme for three years, upto 31st March, 2020 and expanded its scope to cover capital dredging at Major Ports and preparation of DPR for coastal berth project, in Oct 2017.

The projects under Coastal Berth Scheme of the flagship Sagarmala Programme are distributed over eight states with the highest number of projects in Maharashtra (12 projects), Andhra Pradesh & Goa (10 projects), Karnataka (6 projects), Kerala and Tamil Nadu (3 projects), Gujarat (2 projects) and West Bengal (1 project). Out of the 47 projects, 23 projects worth Rs 1075.61 crore have been sanctioned for total financial assistance of Rs 390.42 crore and Rs 230.01 crore has been released to Major Ports, State Maritime Boards and State Governments. The remaining 24 projects are under various stages of development and process of approval.

The most recent beneficiaries of the scheme were Jawahar Lal Nehru Port Trust (JNPT) and Karnataka Government respectively for developing coastal infrastructure at Jawahar Lal Nehru Port, Karwar Port and Old Manglore Port. Rs 25 crore were sanctioned for construction of coastal berth (270m x 30m) at JNPT . Rs 114.4 crore were sanctioned for Karnataka Government for extension of the existing Southern breakwater by 145 metres, construction of a new North breakwater of 1160 metres, construction of coastal berths at Karwar port and construction of coastal berth an capital dredging at Old Manglore port .

The Coastal Berth Scheme aims to provide financial support to ports or state governments for creation of infrastructure for movement of cargo and passenger by sea or national waterways. The admissible financial assistance from Central Government is 50% of the total cost of the project subject to: (i) a maximum of Rs 25 crore for projects relating to construction/up-gradation of coastal berths by Major/Non-Major Ports, (ii) a maximum of Rs 10 crore for construction of platforms/jetties for hovercrafts & seaplanes by Ports/State Governments & passenger jetties in National Waterways and islands by

State Governments, (iii) a maximum of Rs 15 crore for mechanization of berths by Major/Non-Major Ports (iv) a maximum of Rs 50 crore for capital dredging of Major Ports/operational Non-Major Ports ; and (v) a maximum of Rs 50 crore for construction of breakwater for existing and Greenfield Ports. The financial assistance will also be provided for the preparation of DPRs for the projects to be considered under this scheme. The construction of passenger jetties also includes construction of terminal building and allied infrastructure. The balance expenditure has to be incurred by the respective Ports/ concerned State Governments (including State Maritime Boards) from their own resources.

Once completed, the projects will help to promote coastal shipping and increase its share in domestic cargo movement in India. Better infrastructure for coastal shipping will decongest rail and road network besides ensuring cost competitive and effective multi-modal transportation solution. The country has high potential to use coastal shipping for its internal cargo movement given its 7500 kms long coastline.

NP/MS

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Judiciary knows best: SC Collegium

CJI Dipak Misra

Let judiciary, and not the Intelligence Bureau (IB), be the best judge of professional competence of candidates considered for judicial appointments, the Supreme Court Collegium said.

The Collegium of Chief Justice of India Dipak Misra, Justices J. Chelameswar and Ranjan Gogoi made it clear that the IB should not delve into the professional competence of persons shortlisted for the judiciary. The IB does a background check on the candidates once their names are considered for elevation by the High Court Collegium concerned.

“We are of the view that professional competence can best be determined by the members of the higher judiciary who have the opportunity to observe his (candidate’s) performance on a daily basis,” the Collegium noted.

The Chief Justice and his two senior-most colleagues met on November 1 to decide on the recommendations for appointments to Tripura and Jharkhand High Courts and also to consider the case of three Additional Judges in the Gauhati High Court who were to be made permanent judges.

The Supreme Court Collegium further laid down that only factually proven information supplied by the IB on candidates should be taken cognisance of by the Collegium.

“In our view, it would not be appropriate to take cognisance of any unsubstantiated information based on the discreet inquiries made by the Intelligence Bureau,” the Collegium noted.

Nod for elevation

In the cases of the three candidates — advocates Rajesh Kumar, Anubha Rawat Choudhary and Kailash Prasad Deo — for the Jharkhand HC, the Supreme Court Collegium found that the IB had come up with nothing on record against their integrity. All three have been recommended for elevation as judges.

In all the cases, the Collegium’s conclusions show that it has microscopically gone through the IB reports concerning the integrity of the candidates recommended by the HC Collegiums.

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Need to extend reservations for women in Parliament and Assemblies on lines of Panchayats: Vice President

Need to extend reservations for women in Parliament and Assemblies on lines of Panchayats: Vice President

Addresses function 'Building a New India' organized by FICCI Ladies Organization

The Vice President of India, Shri M. Venkaiah Naidu has said that we need to extend reservations for women in Parliament and Assemblies on the lines of Panchayats. He was addressing the function 'Building a New India' being organized by the FICCI Ladies Organization, in Hyderabad today. The Deputy Chief Minister of Telangana, Shri Shri Mohammad Mahmood Ali and other dignitaries were present on the occasion.

The Vice President said that India today is on the threshold of transforming into a major economic power. For this all Indians will have to work with renewed passion and commitment towards building the New India and the India of the dreams of Mahatma Gandhi, Dr. B. R. Ambedkar, Pandit Deen Dayal Upadhyay and several other freedom fighters, he added.

The Vice President said that the New India will be fully literate, free of corruption with shelter to every family, provide power on demand, best healthcare, meet the employment aspirations of the youth, empower women, double farmers' income and convert India into an economic powerhouse with IT, Agriculture and Industrial sectors contributing significantly to its economic growth.

The Vice President said that our ethos and values always respected women and it is unfortunate that abhorrent tendencies of atrocities are taking place in modern times. It needs no reiteration that the most stringent action has to be taken against perpetrators of atrocities on women, he added.

The Vice President said that educating a woman means educating an entire family. He further said that ending gender disparity, ensuring safety, healthcare, imparting job skills, creating more job opportunities and ensuring safe work places are all aimed at empowering women. The Vice President quoted UN report, saying for every one additional year of education for women in reproductive age, child mortality is reduced by a huge 9.50 per cent. The Government has launched various schemes, including 'Beti Bachao-Beti Padhao' which seeks to reverse the trend of decline in Child Sex Ratio, he added.

The Vice President also interacted with the Members of the FICCI Ladies Organization. Responding to a question on what needs to be done for the women empowerment, the Vice President said that education is very important for the empowerment of women. He further said that financial security is also an important factor for women empowerment. They should be given equal opportunities, equal rights and health facilities, he added.

Following is the text of Vice President's address:

"I am happy to share my thoughts on the building of a ‘New India’ with you all, who are working towards women’s empowerment and trying to be change agents. I am glad to know that FICCI Ladies Organization is working on its own and also partnering with the Government of Telangana on various initiatives to empower women, especially those from the marginalized sections.

India today is on the threshold of transforming into a major economic power. For quickening this process of transformation, all Indians will have to work with renewed passion and commitment towards building the New India and the India of the dreams of Mahatma Gandhi, Dr. B. R. Ambedkar, Pandit Deen Dayal Upadhyay and several other freedom fighters.

Friends, we cannot any longer adopt a “chaltha hai” attitude or accept things with a ‘destined-to-happen’ shrug and remain indifferent to the happenings around us. As the Father of the Nation famously said: “Be the change you wish to see”—to start with let everyone work at his/ her own individual level—be it a housewife, a budding entrepreneur or an employee must actively fight against social evils like gender discrimination, atrocities on women, infanticide, malnourishment, corruption, casteism, communalism and illiteracy. Terrorism is the biggest threat to India’s unity and integrity

Somehow over the years, we Indians have developed a rather strange attitude or belief that every problem has to be solved by the Government and the individual or the society at large need not do anything. “Sab kuch sarkaar karega, hum bekar baitegaa” - this premise must change and every citizen must contribute in making India unleash its full potential.

For this to happen and the envisioned New India to take shape, all sections, particularly youth and women, who constitute almost half the country’s population will have to be in the forefront.

The New India will be fully literate, free of corruption with shelter to every family, provide power on demand, best healthcare, meet the employment aspirations of the youth, empower women, double farmers’ income and convert India into an economic powerhouse with IT, Agriculture and Industrial sectors contributing significantly to its economic growth. Of course, politicians and political parties need to be exemplary in their conduct.

From times immemorial and in our scriptures women have been accorded positions of power and leadership. Our ethos and values always respected women and it is unfortunate that abhorrent tendencies of atrocities are taking place in modern times. It needs no reiteration that the most stringent action has to be taken against perpetrators of atrocities on women. Here I would like to recall what Swami Vivekananda had said: “The best thermometer to the progress of nation is its treatment of women”. Our scriptures have said “Yatra Naryastu Pujyante, Ramanta Tatra Devata”, meaning where women are respected, Gods will dwell there.

While women achieved tremendous success in different fields from space to sports, political empowerment is the most critical aspect in the overall empowerment of women. I hope that more and more women would be seen in various bodies—from panchayats to Parliament in the years ahead. It is also necessary to remove all hurdles that come in the way of socio-economic empowerment of women. We need to extend reservations for women in Parliament and Assemblies on the lines of Panchayats.

Needless to say that education forms the foundation for empowering girls and women. As had

been most aptly said educating a woman means educating an entire family. Ending gender disparity, ensuring safety, healthcare, imparting job skills, creating more job opportunities and ensuring safe work places are all aimed at empowering women. On the advantages of educating women, a UN report based on data from 219 countries, said that for every one additional year of education for women in reproductive age, child mortality is reduced by a huge 9.50 per cent.

The Government has launched various schemes, including ‘Beti Bachao-Beti Padhao’ which seeks to reverse the trend of decline in Child Sex Ratio.

I am happy to know that FICCI Ladies Organization (FLO), Hyderabad chapter has taken up various programmes to empower and uplift women, particularly from the weaker sections. I compliment FLO for acting as a facilitator to impart training for women to become drivers, tailors and security personnel in schools.

FLO’s Swayam, a consultancy and mentorship cell for women entrepreneurs is also a laudable initiative.

Finally, I would like to conclude by calling upon every citizen to strive for building New India where the aspirations and dreams of every Indian are fulfilled and where nobody is left behind.

Thank You and Jai Hind!"

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KSD/BK

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Right to privacy is now also a right against torture

On November 1, a video surfaced online showing three half naked male suspects in a police station, clapping their hands and singing, in an apparent exercise in humiliation. It emerged that the video was shot at the Tanur police station, in Malappuram district in Kerala and the suspects were detained for creating a ruckus on the streets. A few days earlier, on October 27, a young boy of 16 years was beaten up a police officer in Kozhikode, near a women's hostel, allegedly for questioning him regarding his identity. The police officer, a Sub Inspector of the Medical College Hospital police station then attempted to drag the boy and take him in the police jeep, when the family members found out and protested. Amid calls for an investigation, the case has died a silent death.

On July 18, Vinayakan, a 19-year old Dalit boy committed suicide in Engandiyur, Thrissur after the police brutally tortured him. Waylaid by a plainsclothes policeman while talking to his girlfriend, he was harassed and mocked for his haircut. The police attempted to frame him and his friend for incidents of chain snatching in the area, a crime he repeatedly denied. Their denial enraged the cop further, causing them to take Vinayakan into custody and along with other cops, they tortured him by stamping on their feet with their shoes, and breaking Vinayak's toes. They abused him using offensive language, pinched his nipples and made it bleed and beat him on his chest. Vinayak fell to the ground screaming in pain, and according to sources, it was only then that the police officers stopped torturing him.

In March 2016, theatre artist Martin Oorali, was picked by the Thrissur police, allegedly on the suspicion that he was travelling on a bike with a drug peddler. According to Oorali, however, the police didn't like his long hair. He was slapped, his hair and assaulted, both physically and verbally and threatened with being force-stripped.

Living and working in Kerala for the past few months, I have come to realise the vagaries of believing statistics, of imagining that the high literacy rate, the incessant newspaper reading, the political fervour, the 'forward' 'matriarchal' society are somehow linked to a liberated, less patriarchal, more equal existence. A product of the Malabar region's matrilineal practice of naming children, I share my mother's and her mother's last name. The sad reality is that in Kerala, all of these practices are not markers of a more evolved society, but simply of culture, of tradition and custom, handed down the years.

While these cases are examples from Kerala, they are reflective of a normalized structure of custodial violence and moral policing across the country. In Madhya Pradesh, police officers of the Tikakgarh rural police station have been accused of stripping striking farmers and beating them. The police and state authorities reflect the existing cultural norms and biases and in two of the cases I illustrated, the victims were targeted for being 'different', for refusing to conform to the dominant narrative of how a person should look and behave.

In the other cases, nakedness and the shame of nudity, was used as a tool to be vengeful against accused persons. All these instances of police brutality and torture in custody are gross violations of the right to privacy.

In India, the shame associated with the naked human body, with exposed skin, makes it easy for police officers to use nudity and sexual abuse as a tool of punishment. This goes back to the theory of punishment our penal system ascribes to – retribution or reformation? Moral policing and enforced nudity in custody are gross violations of one's right to privacy, bodily integrity and human dignity.

On August 24, the Supreme Court of India passed a landmark judgment in the case Justice K.S. Puttusamy & Anr. v. UOI. & Ors – the right to privacy judgment. Interestingly, the judgment abrogated the majority view in the Kharak Singh judgment, which held that domiciliary visits by police was violative of Article 21. Ironically this judgment also held that right to privacy was not a fundamental right under the same Article, even though it referred to the landmark judgment of the US Supreme Court in Wolf vs. Colorado, which dealt with the arbitrary intrusion into one's privacy by the police.

Existing laws already declare that it is a crime to torture, that police officials cannot strip the accused in jail as punishment, that a young boy cannot simply be stopped on the road for talking to a girl and for having a funky haircut. It is common sense and it is also a crime but what the judgment does is to provide a lethal tool with which to advance this fight.

The judgment talks of the 'right to be left alone', the right to human dignity and refers to the Francis Coralie judgment which held that Article 21 includes the right to protection against torture. The Puttusamy judgment reiterates that every person has a right to human dignity and that means a right against bodily violation, one which the State cannot claim immunity against. While this judgment does not specifically rule that the right to privacy includes the right to torture, these are analogous, both of them are unenumerated fundamental rights and one that must not be ignored by activists and researchers while speaking out against torture and police violence. Training programs can now specifically include references to the judgment and focus on the right to privacy as an integral part of the right against torture, both of which flow from Article 21.

We have a right to be left alone. While dealing with criminals and persons accused of crimes, the police will do well to remember that two wrongs don't make a right.

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Mission Kashmir

The government's new interlocutor will arrive in Srinagar on Monday, the storm winds of history pushing back against his face. Armed with the knowledge accumulated during an illustrious career in the covert services, and with status accorded by the government's decision to give him the rank of a cabinet minister, former Intelligence Bureau director Dineshwar Sharma has the authority to spark off a genuine dialogue on Jammu and Kashmir's political future. But he knows, better than most, that the odds are stacked against him. The All Parties Hurriyat Conference, as well as the hardline Tehreek-i-Hurriyat, have refused to participate in the proposed dialogue, citing, among other things, New Delhi's unwillingness to concede that Kashmir is a disputed territory. The two major parties in the Kashmir valley, the People's Democratic Party and the National Conference, have said they will restate their long-standing demands — "self-rule" for the former, which encompasses freedom of movement and joint institutions across the Line of Control, and wide-ranging federal autonomy, for the latter. In Jammu and Ladakh, Sharma will hear calls for greater autonomy from Kashmir — demands New Delhi has historically seen as divisive, and dangerous to the state's future.

New Delhi knew that secessionist parties would stay away: As Intelligence Bureau director, Sharma closely monitored cases against the Hurriyat leadership which have now crystallised into criminal proceedings, while the government snapped a programme of secret financial renumeration to some key leaders. This is of a piece with the Hurriyat's long-standing behaviour: Fearful of terrorist attacks, the conglomerate even walked away from Prime Minister Manmohan Singh's round-table dialogue process in 2006, after promising to participate. But on its part, New Delhi must have a clear idea of precisely what it is bringing to the table. In recent months, the government has adopted an ambiguous position on Kashmir's special constitutional status, and repeatedly ruled out greater autonomy. It is hard to avoid the conclusion that while New Delhi wishes to appear to talk, it may have nothing to say.

This would be tragic. Despite substantial gains against terrorism and street violence in Kashmir, the larger problems of the alienation of the state's youth cohort, and the seduction of some by political Islam, remains unchecked. Political creativity, not a security-centric approach, is needed to address these problems. It would be a pity were Sharma's mission to go the same way as that of Prime Minister Atal Bihari Vajpayee's interlocutor, K.C. Pant, and his many successors. Piles of interlocutors' reports and expert group findings never moved off the table, because political forces in Srinagar and New Delhi alike never had the will, or vision, to make them concrete. The cost of this has been paid by the people of Kashmir.

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The judiciary should exercise firm grip over criminal cases involving politicians

On March 10, 2014, the Supreme Court passed an order in a case brought by the Public Interest Foundation. Various issues dealing with electoral reform were involved, including whether candidates for election should be disqualified only after conviction in a criminal case, or at the earlier point of framing of a charge sheet by a court. That issue was postponed for a more detailed hearing.

However, **Justice R.M. Lodha utilised the occasion to pass a succinct and categoric direction**, hopefully the forerunner of a game changer for cleaner politics in India. In relation to cases against sitting Members of Parliament (MP) and Members of Legislative Assemblies, who have charges framed against them for serious offences specified in Section 8 of the Representation of the People Act, 1951, the trial should be conducted expeditiously, he said, in no case later than one year. If this was not possible, the Chief Justice of the High Court should be notified.

Move the frame to the present. On November 1, 2017, Justices Ranjan Gogoi and Navin Sinha **pick up the baton**. They want to know how many of the 1,581 cases involving MLAs and MPs (as declared in their nomination papers to the 2014 elections) had been disposed of within the time frame of one year, and how many of these ended in conviction. The questions are as succinct as the previous order. The Central government will take six weeks to respond. It fairly states that it will cooperate in setting up special courts to try criminal cases involving political persons.

Hardly any reports have filtered in about convictions following Justice Lodha's order; it is likely that the answer to the court's questions will show extremely low numbers, corresponding to a high degree of violation of the court's order. This by itself is a serious concern affecting all branches of government. However, it makes it all the more desirable that the Bench now exercises a firm grip over this case and steers it to conclusion. This will be as great a contribution to governance in India as any other.

Except perhaps for tainted politicians, the rest of India will acknowledge that those with criminal backgrounds cannot govern us. It is not just a few politicians, and not just any criminal background — out of the 542 members of Lok Sabha, 112 (21%) have themselves declared the pendency of serious criminal cases against them — murder, attempt to murder, communal disharmony, kidnapping, crimes against women, etc. These are the people who make laws for us. Furthermore, our ministers are largely chosen from MPs and State Assemblies. Crime and venality stalk the corridors of power. Those with criminal tendencies do not compartmentalise them. They also engage in corruption and infect the bureaucracy and the police. If virtually every aspect of public governance is tainted — from tenders and contracts to safety of buildings and roads to postings and transfers — lay the blame squarely on the decline and fall of political morality. Urgent judicial relief is therefore a necessity.

It is also a real possibility. Few things stand in its way. The argument that we will be somehow breaching the law of equality by creating special courts to try this lot can be brushed aside; Article 14 permits classification based on criteria and nexus; MPs and MLAs form a distinct class and their early trial is a democratic must. They thus deserve to be given priority treatment (as they get in so many other instances). A shortage of judges can be overcome. The Constitution, under Article 224A, provides for the reappointment of retired High Court Judges as ad hoc judges. There is thus a large pool of judges of integrity and experience to choose from.

Special attention needs to be paid to two factors. One is the necessity of having prosecutors who are not attached to any political party. A directorate of prosecution, headed by a retired senior

judge, who chooses prosecutors in turn vetted by the Chief Justice of the High Court, should be able to address this aspect. The other danger is that the main trial will be obstructed by interim orders. Experience has shown that political leaders are adept at finding legal counsel who file multifarious interim applications which stymie the trial; High Courts and the Supreme Court have sometimes failed to address these expeditiously. This needs to be avoided, and can be if Chief Justices have a superintending mission.

One concern expressed is to find funds to create the infrastructure and staffing for the special courts. A government which comes up with 2.11 lakh crore to clean up bank balance sheets should have no difficulty in finding a fraction to clean up political criminal spread sheets. And if required, the Finance Minister can devise a ‘Swachh Politics Bharat Bond’. It is bound to be oversubscribed, many times over, by delighted citizens.

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The definition of harassment needs to be constantly updated, and the process for justice made more robust

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The status of de facto states and the conditions that allow them to thrive

For Kurdish homeland The Parliament of Iraq's autonomous Kurdistan region approved a plan recently to hold a referendum on independence on September 25, ignoring opposition from Baghdad as well as Western concerns. Picture shows Syrian Kurds taking part in a rally in support of the referendum. | Photo Credit: AFP

On September 25, a referendum for independence was held by the autonomous Kurdistan Regional Government in the northern areas of Iraq. The government claimed that 93% of those who voted supported independence. Predictably, the Iraqi government in Baghdad rejected these results. On Monday, Iraq's Supreme Federal Court ruled that no region or province can secede from the country.

Adrian Florea's paper, "Defacto States: Survival and Disappearance (1945-2011)", published in the *International Studies Quarterly* in March, seeks to study these kinds of "de facto states" — separatist territories that are administered autonomously and are recognised as part of sovereign nation states. Other examples include the rule of a portion of northern Sri Lanka by the Liberation Tigers of the Tamil Eelam from the 1980s to the late 2000s, and present day de facto states such as Gaza (ruled by the Hamas) and South Ossetia (Georgia), Somaliland and Puntland in Somalia besides formerly de facto states such as Eritrea, East Timor and South Sudan which later became de jure sovereign nation states.

The author tries to understand the conditions that led to the transition of de facto states to full statehood, or their forceful or peaceful reintegration into their de jure parent states from which they sought separation, or the prolonging of de facto status. The study reveals that the survival of de facto states is mainly linked to the following factors: external patronage, including military support; insurgent fragmentation; the extent of rebel governance; and the presence of government veto players in the parent state. External military help for rebels in the de facto state helps them stave off the threat from the Central government, but lowers the likelihood of peaceful reintegration or transition to statehood. This was clear in the case of the LTTE which managed to retain power for a significant period, but once substantive external help was cut off from the rebels, the territory the LTTE held was forcefully reintegrated within Sri Lanka. The more the rebels work out a state-like structure capable of providing strong alternative governance, the better their chances of recognition by the international community as a separate nation state over time. That said, if there are multiple rebel actors who disagree among themselves, the lesser such chances, as is seen in Palestine. Last, if there are multiple veto powers in the Central government, it reduces the possibility of a settlement with the rebels that could result in independence, the study finds.

The definition of harassment needs to be constantly updated, and the process for justice made more robust

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Unsettling the status quo in Jammu and Kashmir

“Or call it winter, which being full of care, Makes summer’s welcome, thrice more wished, more rare.” — William Shakespeare

Whatever the motivation, the **appointment of the former Director of the Intelligence Bureau (DIB) Dineshwar Sharma** as the interlocutor for Kashmir is to be welcomed. Better late than never.

Predictably, the beleaguered Chief Minister of Jammu and Kashmir, Mehbooba Mufti, was the **first to welcome the appointment** which enabled her to claim that the Bharatiya Janata Party had fulfilled its promise of dialogue. She, however, subsequently clarified that it was the secular DNA of India that had encouraged her Peoples Democratic Party to align with its ideological opposite, the BJP, in the State. National Conference president Farooq Abdullah perhaps expressed the Kashmiri sentiment more aptly when he said that we also need to talk to Pakistan. The reservations of the wise men of the Hurriyat notwithstanding, there has been palpable excitement in Srinagar that peace may at last have a chance. At the very least, the appointment provides hope. Separatists have been egging the Hurriyat high command to respond positively and even the most hardline of the separatists, S.A.S. Geelani, **acknowledges that dialogue is the only way forward**. The more moderate Mirwaiz has pleaded for dialogue umpteen times.

Heavy-handedness is not the answer in Kashmir; it never has been and is not likely to be in the future. It only furthers the cause of separation. Kashmir is not a military or law and order problem; it is a political and emotive issue.

The security forces have a difficult job in J&K and have been doing this admirably of late, but rubbing that in or stating the obvious where it touches a raw nerve makes no sense. Obviously the appointment of the special representative does not imply that Army operations would wind down. It does not require the Army Chief to say so repeatedly. The Kashmiris know fully well that no representative of the Government of India can engage or talk beyond the Constitution. Repeating it endlessly only betrays a lack of confidence. It did not require former Deputy Prime Minister L.K. Advani to say so when he held rounds of talks with the Hurriyat in 2004. Talks were in fact extremely cordial, with the Hurriyat leaders somewhat overawed by him. As a senior Hurriyat then acknowledged, they fully understood the ambit of engagement.

What Kashmir and the Kashmiris need is not another shopping list of concessions or promises but the shock therapy of absolute candour. Not magnanimity but hard-nosed common sense that former Prime Minister Atal Bihari Vajpayee displayed. In fact, he is still revered in the Valley more than any other leader. Finding a way out of any mess requires a willingness to listen.

There is no better listener available in Delhi than Mr. Sharma, who has **all the attributes required of an interlocutor**. He is humble, talks little, understands and feels for Kashmir, and has infinite patience. Plus, he has loads of experience, including a stint in Srinagar during the most difficult days. If press reports are to be believed, he has no restrictive mandate either. Nor should he feel hobbled by the situation on the ground. It is quite often left to Intelligence agencies to do the dirty work, to flirt in the grey areas. Kashmir is nothing if not grey. Mr. Sharma has been appointed interlocutor for exactly that reason: to try to alter the situation in Kashmir by investing in trust, building new bridges and repairing the old.

Given the mandate he received in 2014, Narendra Modi was in a position to do what no Prime Minister in recent times could do. The Jammu and Kashmir Assembly elections too went the BJP’s way. In Kashmir, there was hope that the new BJP government would follow in Mr. Vajpayee’s

footsteps. Even the Mirwaiz welcomed Mr. Modi's election as Prime Minister. But unfortunately, there has been no engagement in Kashmir.

Kashmiris crave peace and desire engagement. Not talking has again brought Pakistan into the game when it was quite out of the equation in Jammu and Kashmir. There is still no great love lost for Pakistan; Kashmiris realise they have no future across the border but it remains the most convenient fallback. Alienation, disillusionment and, of late, anger and disgust bring out the green flags.

Added to that is the Kashmiris' ultimate fear that they could be reduced to a minority in their State. Threats of scrapping Article 370 and 35A of the Constitution only add to Kashmiri apprehensions, leading to unnecessary turns in the debate on autonomy, a legitimate Kashmiri aspiration. The sentiment of subnationalism in Kashmir is not very different from that in most other States, except that in Kashmir it is guaranteed by the Constitution.

The detention and arrest of separatist leaders serves no purpose except that it may provide the interlocutor a ready concession to offer the Hurriyat. Invariably, release of their colleagues is their first demand. To that extent it could facilitate dialogue. But as Ms. Mufti rightly said in Delhi, the National Investigation Agency needs to step back to facilitate an atmosphere for talks. Ironically, Shabir Shah, who was once Narasimha Rao's favourite to be Chief Minister, is lodged in Tihar Jail.

There has been much talk of speaking to the youth in Kashmir, a consummation devoutly to be wished for except that antagonised youth who count are not easy to find in Srinagar. South Kashmir, where the young have been radicalised since Burhan Wani's killing, is a different world, far from accessible. Such is the situation that the long overdue parliamentary election in Anantnag has still not been held.

The much-maligned Hurriyat is far more accessible. Mr. Sharma's old friends should help him reach out to them even if being out is never quite the same as being in the system. Not talking to the separatists would render the dialogue meaningless. The mainstream does not need an interlocutor to engage. As former Jammu and Kashmir Chief Minister Omar Abdullah once said, they were always available to Delhi for talks, it is the separatists that Delhi needs to engage with.

Whether credible or not, Hurriyat thinking is still a factor in Kashmir as much as Pakistan. Basically, the Kashmiri is not at peace with the status quo. The peace with honour he bargained for still eludes him. The reason that we have reservations about talking to the Hurriyat and to Pakistan are the very reasons we need to talk to them. The magic of democracy is that hardliners get moderated and mainstreamed. The majority realise that their future lies with India. They deserve a chance.

It is unfortunate that Pakistan chose to immediately react negatively, saying that the interlocutor's appointment was neither sincere or realistic. No wonder we say, who do we talk to in Pakistan?

The Hurriyat must resist the trap. Nothing can redeem their credibility better than engagement. As Mufti Mohammad Sayeed would say, there is no better way but to talk. Not talking is no longer an option, if it ever even was.

A.S. Dulat, a former chief of the Research and Analysis Wing, was an adviser on Kashmir in the Prime Minister's Office

The definition of harassment needs to be constantly updated, and the process for justice made more robust

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Centre plans to set up more commercial courts

Days after India jumped 30 positions in the World Bank's Ease of Doing Business ranking, Law Ministry officials said the Union government proposed to establish commercial courts in districts to further improve the parameters.

Legal remedy to commercial disputes and enforcement of business contracts are parameters of the World Bank ranking. In terms of ease of enforcing contracts, India jumped from 172 to 164. "Though the jump in the ranking sounds small, it is substantial given the diversities of laws in our country and the complex demography," said an official of the Law Ministry familiar with the process.

Varying performance

India's performance has been varied within the legal framework. For example, the World Bank's ranking marked "court system and proceedings in India" 4.5 out of a total of 5, but in management of cases, it was 1.5 out of 6. India also fared well in alternative dispute redress mechanism and scored 2.5 out of a total of 3 marks. "The government is proposing amendments to facilitate the establishment of commercial courts, at the district level, in places where the High Courts have ordinary original civil jurisdiction," the official said. The specified value of commercial disputes would be brought down so as to expand the scope of commercial adjudication effectively and expeditiously.

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Eliminating the mafia from Indian politics

Last week, the Supreme Court asked the government about the status of criminal cases pending against elected ministers, underlining the importance of breaking from the history of law-breakers becoming law-makers. The court recommended setting up fast-track courts to deal with the cases, but that is unlikely to be an effective strategy, unless complemented with reforms to improve governance and bring transparency in campaign financing.

Criminalization refers to the use of criminal activities by politicians; either by direct malfeasance or by indirectly recruiting someone. It is not a new phenomenon; the first instances of “booth-capturing” were reported in 1957, and involved hired goons who would mobilize or suppress turnout, or vote on behalf of disenfranchised voters. In return for their work, politicians would protect these criminals from prosecution. From such petty engagement with elections, *goondas* and gangs have come a long way to contest elections themselves. Milan Vaishnav, author of *When Crime Pays: Money And Muscle In Indian Politics*, calls this an example of vertical integration. Until the late 1960s, the re-election rates of incumbents were high. Hence goons were relatively assured of political favours after they helped a politician win the election. As political competition increased, the uncertainty around re-election of incumbent candidates also increased. This led to the entry of criminals in politics in order to maximize control over their own survival and protection. Many goons who had not been involved in politics joined it as a competitive response as they feared missing out on opportunities, or a crackdown by a competing gang.

Vertical integration does not explain why political parties chose to field such ruffians; criminality of the candidates could have brought bad press. That process began with Indira Gandhi banning corporate financing of elections in 1969. This eliminated the most important legal source of campaign finance and pushed financing underground. At the same time, the costs of contesting elections kept increasing due to a rising population, increasing political competition—the number of political parties increased from 55 in the 1952 general election to 464 in 2014—and the trend of giving freebies for votes. This led parties to a competitive search for underground financing, and they played into the hands of criminals and racketeers who had the means to acquire and dispose of large amounts of cash without detection. Thus parties fielded tainted candidates because they could contest an election without becoming a burden on the party’s limited coffers. Data from the last three general elections shows that the strategy was an electoral success as candidates with criminal cases were three times more likely to win than a “clean” candidate.

The root of the problem lies in the country’s poor governance capacity. On the one hand, India has excessive procedures that allow the bureaucracy to insert itself in the ordinary life of people; on the other hand, it appears woefully understaffed to perform its most crucial functions. The density of allopathic doctors, nurses and midwives is 11.9% per 10,000 residents in India (2014), at half of the benchmark set by the World Health Organization (WHO). Furthermore, the density is ten times larger in urban areas than villages. Despite internal security concerns—from Maoist violence to religious extremism and organized crime—there is a 30% shortfall in personnel of the Intelligence Bureau. India has the lowest number of police officers per capita—122.5 per 100,000 people—of any G20 member state, and the vacancy rate stands at 25%. Vacancy rates are 37% for high courts and 25% for local courts.

This scarcity of state capacity is the reason for the public preferring ‘strongmen’ who can employ the required pulls and triggers to get things done—someone who can enforce contracts, deal with the police when they get into trouble, handle the government babus while procuring a licence or help get admission to a government hospital for treatment. Sometimes these politicians align on communal lines as well, promising to serve the interests of a caste or religious community. Criminality, far from deterring voters, encourages them because it signals that the candidate is

capable of fulfilling his promises and securing the interests of the constituency.

Fast-track courts are necessary because politicians are able to delay the judicial process and serve for decades before prosecution. But it is obvious that this will do little to break down the symbiotic relationship between politicians and criminals on the one hand, and the dependence of voters on strongmen on the other. Prosecuted politicians can field their relatives in the contest, thereby retaining power within the family.

The reform needs to change the incentives for both politicians and voters. First, bringing greater transparency in campaign financing is going to make it less attractive for political parties to involve gangsters. Thus, either the Election Commission of India (ECI) should have the power to audit the financial accounts of political parties, or political parties' finances should be brought under the right to information (RTI) law. Second, broader governance will have to improve for voters to reduce the reliance on criminal politicians. That requires a rationalization of bureaucratic procedures and an increase in state capacity to deliver essential public goods like security of life and contracts, and access to public utilities. Standing alone, fast-track courts for politicians will be ineffective in cleansing Indian politics.

How can the decriminalization of politics be achieved? Tell us at views@livemint.com

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New tech that can fight cybercrime in the year 2020

Technological advances are taking place more rapidly than they are being adopted on ground. More devices and individuals are getting connected to cyberspace and are exposed to online risks. Intel Corp. predicts the number of internet-connected devices to go from the current 15 billion to around 200 billion in 2020—which is also the number of potential devices that might be prone to being hacked. In the present scenario, businesses face difficulty in securing their assets from potential threats; imagine the risk of cybercrime with 200 billion devices coming online.

While there is no denying the future threats of cybercrime, we simply cannot undermine the importance and risks associated with upcoming technology. Connecting cars, planes, pacemakers and even power grids to computer systems has given us more access to the immense efficiency and automation than was unimaginable some decades ago. So will be the growth in security threats that come attached to the connected cyberspace.

Here are some of the areas that future cyber criminals would focus on.

Data protection and privacy: The parameter of data protection already serves as a great challenge with respect to online services. The future of data aggregation, globalized sensor proliferation, and personalization would require the augmented services to adopt common legal frameworks to ensure security and privacy. Countries might exercise sovereignty rights for setting their specific rules with respect to when data should be stored and processed by different authorities for reliable and legitimate purposes. Cyber criminals might have found a new resource in the form of Aadhaar, which is linked to vital information sources such as bank accounts and mobile numbers of every Indian. It is important for authorities to be on their toes in safeguarding the same from future unknown hacking techniques.

Identity and reputation: For businesses, industries, governments, and citizens; identity and reputation are going to be everything. As such, damage due to a potential cybercrime could be significant and difficult to restore or repair. Identity theft and espionage would be a lucrative focus for cybercriminals to either launch attacks using stolen data or through direct extortion from individuals and businesses.

Cryptocurrency mining: Cryptocurrencies can be mined using computational power, and profits can be earned as arbitrage between value of coins mined and the cost of infrastructure and power. Cybercriminals can exploit private and government infrastructure by deploying malware for mining cryptocurrencies in an unauthorised manner. From one compromised server in a data centre, a hacker can easily mine $2,000 a month. This would cause loss of business, hardware damage and increased costs for the victims.

Cyber-jacking: Instead of physically hijacking a plane, cyber criminals can hack into the management systems of aircrafts and hijack or crash a plane.

Human malware: Hackers can target pacemakers, cardioverter-defibrillators, insulin pumps, and other such devices. Researchers have demonstrated that it is possible for hackers to break into your implant and cause collateral damage.

Quantum computing: High-speed computers with tremendous computing power are being developed to assist artificial intelligence applications, robotics and machine learning. The computing power of these machines can easily break the current encryption technologies and cause havoc if they get into the hands of a cyber criminal.

Industrial espionage: Cyber attacks in the future will be geared towards industries of prime importance such as power, energy, oil and nuclear power. Such attacks can disrupt the critical infrastructure of a country, especially if done through a state-sponsored platform.

Misuse of augmented and virtual reality can be exploited for frauds and social engineering attacks.

Cybercriminals of the future would be more focused, better planned, better equipped and would work in a collaborative fashion with other cyber criminals to launch more sophisticated attacks on individuals and businesses.

With advancements in digitization, organizations, individual as well as defence establishments would be potential targets of cyber criminal activities. Threats such as cyber-jacking and human malware could lead to physical injury as well as loss of life. Furthermore, there are usually multiple agencies responsible for cyber security and they may not be coordinated to match the future cyber criminal. The rise of cybercrime in the current years serves as a great signal for the incrementing societal engagement in issues of data protection and internet governance. It is assumed that citizens will demand greater transparency as well as accountability from the governments and service providers, and even some kind of data autonomy. Taking a cue from Europe's General Data Protection Regulation (GDPR), it is important for governments and businesses to understand that an individual's data is his or her asset and eventually individual's rights can be exercised under a mature regulated environment. Hence it is important for increased data protection and governance culture.

Existing laws along with the mindset of law enforcement agencies need to evolve to confront the challenges of potential cybercrimes in 2020. In addition, law-enforcement agencies need to upgrade themselves with the latest technologies such as artificial intelligence and robotics to better tackle the future cybercrime. Internet protocol (IP) address or source tracing remain a challenge due to use of proxies, virtual private networks (VPNs) or Tor relay points. A possible solution to this might be allocation of IPv6 addresses on an individual basis. IPv6 uses a 128-bit address, theoretically allowing 2^128, or approximately 3.4×10^38 addresses, which is significantly more than what is required by the human population. If every user is allocated an IPv6 address, which is required to connect to the internet, it will eliminate the issue of IP tracing. Such IP addresses can then be mapped to Aadhaar to track online communication, just like mobile telecommunication. A combination of increased user awareness and use of advanced technologies for defence will go a long way in helping individuals and enforcement agencies deal with the future of cybercrime.

Amit Jaju is partner, forensic technology and discovery services, EY India.

END

SC recalls order to take up delay in MoP

CJI Dipak Misra

Chief Justice of India (CJI) Dipak Misra, heading a three-judge Bench, on Wednesday openly disagreed with the decision of a two-judge Bench to publicly hear, on the judicial side, the reasons for the government's delay in finalising the norms for appointment of judges to the Supreme Court and High Courts, and appointment of regular High Court Chief Justices.

The three-judge Bench recalled a decision of a two-judge Bench of Justices A.K. Goel and U.U. Lalit on October 27 to investigate the government's reasons for "lingering" over its job of finalising the Memorandum of Procedure (MoP) for appointment of Supreme Court and High Court judges.

That Bench observed in a written order that it is going to be about two years since a five-judge Constitution Bench, after striking down the government's NJAC (National Judicial Appointments Commission) law, tasked the Centre in December 2015 with the job of drafting a fresh MoP to replace the current one with the objective of making judicial appointments transparent. However, no ground was covered in the past months despite the constant to-and-fro of MoP drafts between the Supreme Court Collegium and the Union Law Ministry.

Justices Goel and Lalit issued notice to Attorney-General K.K. Venugopal to explain why the government has dawdled in both the MoP issue and the lack of appointment of regular Chief Justices in High Courts. At present, seven High Courts are led by 'Acting' Chief Justices. In some High Courts, such Chief Justices have been continuing for months.

The Bench of Justices Goel and Lalit had scheduled the next hearing for November 14. However, the case was listed before a new Bench of CJI Misra and Justices A.K. Sikri and Amitava Roy.

On Wednesday, as soon as the Bench convened, CJI Misra made clear his disagreement with the order passed by Justices Goel and Lalit.

"After the Constitution Bench has gone into all this in the NJAC issue, there is no need to go into them now ... these are not matters to be gone into on the judicial side at all. That's all there is to be said," he said at the very beginning of the hearing.

Senior advocate K.V. Vishwanathan, appointed *amicus curiae* in the case by Justice Goel's Bench, told the CJI that the issue revived by his brother judges on October 27 was one of "great concern".

"We are aware of it," the CJI replied.

"There is a feeling that there is a delay. The number of vacancies in High Courts is shocking. There is a right to access to justice," Mr. Vishwanathan persisted.

"And we know how to deal with it ... What do you know about what we have done about it?" the CJI said.

"There is no need to proceed in view of the judgment of the NJAC," the CJI recorded in a short order, disposing of the matter.

A marked departure

The CJI’s refusal to plunge headlong into a collision course with the government is a marked departure from the open-court confrontations his predecessor T.S. Thakur used to have last year with the government over the MoP and the rising vacancies in the higher judiciary.

In one such hearing in August 2016, Justice Thakur launched the sharpest ever public attack on the government by asking whether the Centre intended to bring the entire judicial institution to a “grinding halt” by sitting on recommendations of the Collegium for appointment and transfer of judges to High Courts. He made it clear to the Centre that the apex court would not shy away from a confrontation with the government if driven to a corner.

In full view of the members of the Supreme Court Bar, litigants and the media, Justice Thakur cautioned the government that if matters continued in the same strain, the court would be “forced” to judicially intervene. However, the hearings lost steam after Justice Thakur retired early this year and the stalemate over the MoP continued.

END

Right to privacy as right to life

In the Supreme Court's **right to privacy judgment** (*Justice K.S. Puttaswamy v. Union of India*), **Justice D.Y. Chandrachud held**: "Life and personal liberty are inalienable to human existence… The human element in the life of the individual is integrally founded on the sanctity of life… A constitutional democracy can survive when citizens have an undiluted assurance that the rule of law will protect their rights and liberties against any invasion by the state and that judicial remedies would be available to ask searching questions and expect answers when a citizen has been deprived of these most precious rights."

In 2014, Delhi University professor G.N. Saibaba was arrested under the Unlawful Activities (Prevention) Act and held in Nagpur Central Jail till the **Supreme Court granted him bail in 2016**. In March 2017, he was convicted by the Gadchiroli sessions court to **life imprisonment for alleged offences** under the same Act, and returned to custody in the Anda cell of Nagpur Central Jail. His appeal against the conviction is pending before the High Court in Nagpur. While the grounds of his conviction are debatable, the immediate concern is regarding the question of miscarriage of justice on other grounds. Mr. Saibaba has severe disabilities and multiple related health conditions and has high support needs. Placing him in solitary confinement with no support violates his right to life, bodily integrity and autonomy under Article 21, although his conviction only imposes restraints on personal liberty. This inhuman treatment is punishment far in excess of the sentence awarded by the court.

It is now time to ask searching questions about the sentence, and appeal to the court for the application of constitutional due process so as to not endanger his right to life.

The deplorable conditions in Indian prisons are well known. It is settled law now that prisoners may be deprived of personal liberty according to procedure established by law, but that does not include a derogation of their right to dignity. The privacy Bench reiterated the words of Justice Krishna Iyer in the *Prem Shankar Shukla* case: "The guarantee of human dignity, which forms part of our constitutional culture, and the positive provisions of Articles 14, 19 and 21 spring into action when we realise that to manacle man is more than to mortify him; it is to dehumanise him and, therefore, to violate his very personhood, too often using the mask of 'dangerousness' and security…" and that the right to life cannot be restricted to mere "animal existence". How do we begin to understand the sanctity of life, dignity and bodily integrity for a person with disabilities? If handcuffing is an extraordinary and excessive restraint on an ordinary prisoner, what constitutes excessive restraint beyond the writ of law for a person with disabilities?

The Supreme Court holds unequivocally that in adopting the Constitution, the people of India do not surrender the most precious aspects of the human persona — namely life, liberty and freedom — to the state on whose mercy these rights would depend. Each of these aspects — life, liberty and freedom — must be considered together and/or severally as the case may be. Where there is a sentence on personal liberty, the citizen does not surrender his life to the mercy of the state.

If, as the right to privacy judgment asserts, privacy "as an integral part of the right to human dignity is comprehended within the protection of life as well", it is necessary for every court to develop a sensibility towards and understanding of what constitutes human dignity and protection of life for persons located differently in the social order. For, an important aspect of this judgment, which is now law in India, is respect for human diversity and pluralism.

Albeit with reference to a different case, the court observed that neither the fact that very few persons bear certain attributes nor the test of "popular acceptance… furnish a valid basis to disregard rights which are conferred with the sanctity of constitutional protection". Mr. Saibaba

may well be the only person in his situation. That in itself is reason for the courts to intervene actively in his favour and remove him immediately from this precarious situation of precarity and irreversible harm.

Entitled to bail

In the light of the decision of the Supreme Court on the right to privacy, particularly its comments on the *Suresh Kumar Koushal* judgment on Section 377 of the Indian Penal Code and the habeas corpus case, one cannot help but hope that the Nagpur High Court, in considering Mr. Saibaba's appeal against his conviction, similarly examines the judgment and deliberates on the relationship between fact, law, popular rhetoric and proportionality therein.

Most importantly, however, it is hoped that the court examines disability as a ground for the grant of bail, as distinct from (but related to) "medical grounds". This entails, according to the Rights of Persons with Disabilities Act, 2013, "respect for inherent dignity, individual autonomy… and independence of persons" and "accessibility". Section 2(s) of the Act defines a person with disability as "a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others." In conditions of custody, such persons must be protected from any hindrance to the exercise of bodily integrity and autonomy with dignity — this lies at the core of his right to privacy. Unavailability of such a guarantee within custodial facilities entitles the prisoner with disabilities to bail.

Mr. Saibaba's predicament is best described in his own words: "I am frightened to think of the coming winter… As temperature goes down excruciating pain continuously in my legs and left hand increases. It is impossible for me to survive here during the winter that starts from November… I am living here like an animal taking its last breaths. Somehow eight months I managed to survive. But I am not going to survive in the coming winter. I am sure. It is of no use to write about my health any longer...

"No one understands 90% disabled person is behind bars struggling with one hand in condition and suffering with multiple ailments. And no one cares for my life. This is simply criminal negligence, a callous attitude." (Extract from his letter to his wife dated October 17, 2017.)

At the time of his conviction and the proceedings so far, we did not have the constitutional wisdom of the privacy Bench before us. In weighing the question of restraint on personal liberty against the risk to life, bodily integrity and dignity, the court scene in *The Merchant of Venice* spins into view: "Therefore prepare thee to cut off the flesh/Shed thou no blood, nor cut thou less nor more/But just a pound of flesh." A Daniel, come to judgment.

Kalpana Kannabiran is Professor and Director, Council for Social Development, Hyderabad

The definition of harassment needs to be constantly updated, and the process for justice made more robust

END

Naga peace: Indian govt has turned the pressure on Khaplang faction

A belligerent rebel group is now in a marque moment in the Naga peace process.

Last week I suggested, reflecting substantial public opinion, that there cannot be true Naga peace and reconciliation without the National Socialist Council of Nagaland's Khaplang faction. As the second-largest Naga rebel group and in active combat against India, Myanmar-based NSCN-K has still-impressive reach in Indian territory in South-Eastern Arunachal Pradesh, North and East Nagaland, and parts of Manipur.

It is in alliance with several rebel groups rooted elsewhere in North-East India, such as the so-called independent faction of the United Liberation Front of Asom, a Bodo splinter group, a Kamtapuri offshoot that locates its emotional heart in Northern West Bengal, and a half-dozen Manipuri rebel groups under the umbrella of CorCom, or Coordination Committee. NSCN-K offers these groups sanctuary and/or logistics support. Since 2015, when it broke away from a ceasefire with government of India, NSCN-K has conducted joint operations in India with elements of CorCom.

This continues the policy of S.S. Khaplang, the chief of this faction who died in June this year, by his successor Khango Konyak. Unlike Khaplang, who was a Hemi Naga from Myanmar—which has substantial Naga homelands separated by Britain's sharp partitioning knife—Konyak is from the eponymous tribe largely located in Nagaland's northern Mon district.

It's not a pretty picture in the otherwise hyped Naga peace process, in which the largest group of Naga rebels, the Isak-Muivah faction or NSCN (I-M) is in active talks with the government of India; these formally began in August 2015. That happened just months after NSCN-K went its way, as if in recognition of India's compact with its arch-enemies: NSCN (I-M). The peace process has since September been joined by six smaller Naga rebel groups.

It is clear that the government has turned the pressure on the Khaplang faction. Besides hitting back with combat operations, including an end-September hit by India's Army on some NSCN-K strongholds across the border in Myanmar. In end-October, a team from National Investigation Agency (NIA) seized nearly Rs28 lakh in Dimapur from Shelly, wife of a key general in NSCN-K, the flamboyant and crafty Nikki Sumi, the mastermind of several attacks against Indian troops. Days later NIA announced it had proof of four Nagaland government officials channelling Rs20-25 crore of extorted funds to NSCN-K from 2012-16.

This is classic power play with signals going out loud and clear. For several years now, combat in this sphere has generally kept away from families of combatants on every side. The government publicly tagging the wife of a senior NSCN-K officer is a "back-off" gambit. It's also seen as a move to create fissures in NSCN-K by exposing Sumi's vulnerability, though whether that will actually happen as part of a continuing play to get NSCN-K or a substantial section of it back to the talks table, is as yet wide open.

Significantly, there is no such public tagging when it comes to NSCN (I-M), though by all accounts, the faction gathers maximum revenue among all rebel groups in India with the exception of the Maoist machinery; or the six Naga groups recently added to the peace process. After all they are at the table for talks.

India's security establishment has increasingly got better at keeping tabs on rebels, including knowledge of assets that leaders and their families own, say, in India, Myanmar and Thailand, let alone homes in what is sometimes jocularly called the Beverly Hills suburb of Dimapur,

Nagaland's commercial hub. A senior army officer once boasted to me of how they could roll it all up—at least in India—if they wished. Naturally, there is a limit to penetration, as attacks by NSCN-K on India's Army and paramilitaries have shown, but it's all point and counter-point.

The cat-and-mouse game extends to containing China, which India's security apparatus believes is the puppeteer behind NSCN-K and its allies. Indeed, another chess move came earlier this week, when *Mizzima*, a respected Myanmar news organization, cited a general saying, "We will not allow our soil to be used against India." *Mizzima* claimed the statement was made in Imphal, Manipur's capital, at the end of a seminar on 3 November.

Will it bring it all to boil, bring NSCN-K in one form or another to the table alongside efforts by Naga citizens' groups to reach out for peace and reconciliation—citizens who realize there can be no true peace without NSCN-K either on board or strictly contained in Myanmar? Game on.

Sudeep Chakravarti's books include Clear.Hold.Build: Hard Lessons of Business and Human Rights in India, Red Sun: Travels in Naxalite Country *and* Highway 39: Journeys through a Fractured Land. *This column, which focuses on conflict situations and the convergence of businesses and human rights, runs on Thursdays.*

Respond to this column at rootcause@livemint.com

END

Lt. Governor cannot differ with Delhi govt. on trivial issues: CJI

Dipak Misra

The Lieutenant Governor (LG) cannot differ with each and every administrative decision of the Delhi government. Though having every authority to differ, his disagreement with the Delhi government should not be “trivial or contrived, but substantive,” Chief Justice of India Dipak Misra orally observed on Tuesday.

Aid and advice (of the Delhi government) should be accepted and respected unless there is an abuse of authority, Chief Justice Misra observed on the second day of a full length hearing by a Constitution Bench on the power tussle between the Centre and the AAP government over the LG’s administrative powers.

Issue-oriented

“The intervention [of the LG] does not mean he will have confrontation. It should be fact and issue-oriented on objective parameters,” Chief Justice Misra observed. He said the LG should conduct his constitutional duties, keeping in mind factors like he is an “august head, keeping in mind the special status of Delhi as the National Capital, what was intended by Parliament in the 69th Constitutional Amendment, not act in a way to defeat the intent of the constitutional provision of Article 239AA of harmonious governance and, most importantly, citizenry’s trust.” “He [LG] cannot supplant the administration,” Justice D.Y. Chandrachud observed from the Bench.

Justice Ashok Bhushan remarked that it was not constitutionally contemplated that one man’s concurrence would be required for each and everything that an entire ministry does.

Chief Justice Misra said the LG however need not concur with everything.

Referring to the Government of National Capital Territory of Delhi Act of 1991, the Chief Justice said the Delhi government is bound to intimate the LG on taking a policy decision. “You are bound to intimate the LG, but you cannot say that the LG has to concur,” Chief Justice Misra said.

‘Egregious situations’

Delhi government counsel and senior advocate Gopal Subramanium submitted that in “egregious situations where there is palpable abuse of authority, the LG can indeed intervene as a delegate of the President.” Mr. Subramanium described the LG as a watchdog.He submitted that the LG can intervene if, for example, policies of the Delhi government affect institutions of national importance.

“He can intervene and disagree if policies of the Delhi government amount to manifest transgression. For example, the use of entire monuments for some social occasions. In such cases the LG can step in. He is the parens patriae,” Mr. Subramanium submitted.

But in the present case, Mr. Subramanium submitted, the LG has been intervening in the day-to-day functioning of the government.

“From functioning of mohalla clinics to appointment of lawyers for the Delhi government, he has intervened. In some cases, the files have been pending for over a year,” Mr. Subramanium submitted.

“Most innocuous issues are stowed away,” he added.

Justice Chandrachud pointed out from the Conduct of Business Rules of the Delhi government that there were some proposals which had to be “essentially submitted” to the LG for his concurrence, whereas some could be enforced the moment they are communicated to the LG.

Executive functions

Mr. Subramanium made the position of the Delhi government clear, saying that while the overarching supremacy of Parliament to make laws for the National Capital Territory is acknowledged, the executive functions of the democratically-elected government of Delhi cannot be “eclipsed.” The Delhi government has its own legislative sovereignty and concurrent executive ability.

Barring the LG’s discretion in certain fields, the aid and advice of the Council of Ministers is binding on him, Mr. Subramanium submitted.

He termed Article 239AA a “provision extraordinaire” which has abrogated the President’s power to delegate powers under Article 239 (1) to the Governor as far as the National Capital is concerned.

“Except in the subjects of police, public order and land for which the LG administers as a delegate of the Centre, the rest is participatory governance,” Mr. Subramanium submitted.

President’s role

At one point, Justice A.K. Sikri asked about the actual role of the President when the LG refers to him an issue on which the latter has a difference of opinion with the Delhi government.

“Does the President actually act in his personal capacity or on the aid and advice of the Union?” Justice Sikri asked.

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Affordable tariff structure for rural and remote areas to promote Digital India

BharatNet, a flagship project of the Government of India to provide Broadband services in rural and remote areas has entered in service provisioning phase. As on 05.11.2017, Optical Fibre Cable (OFC) connectivity has been achieved in 1,03,275 GPs by laying fibre for 2,38,677 km. Due to several measures initiated to accelerate the end-to-end connectivity, GPON equipment has been installed in 85,506 GPs and 75,082 GPs are Services Ready.

Digital India, to provide Digital Services in rural and remote areas, is one of the priority areas of the Government. In order to provide affordable broadband services in rural India under the dynamic leadership of our Hon'ble Prime Minister of India Shri Narendra Modi, a new attractive and affordable tariff structure has been decided with the principle of more you use, less you pay. This tariff structure is expected to be reflected in the tariffs to be charged from the consumers by the service providers.

For asymmetrical bandwidth between block to GPs the charges per annum varies from Rs.700/- per Mbps for up to 10Mbps and Rs. 200/- per Mbps for 1 Gbps. However, for symmetrical bandwidth between block to GP, charges have been prescribed as Rs.1000/- per Mbps up to 10Mbps, and Rs.500/- per Mbps for 100 Mbps per annum. Tariff for any intermediate Bandwidth shall be calculated on pro-rata basis.

Further, discount of 5% to 25% have been offered for taking bandwidth in more than 1000 GPs to more than 25,000 GPs in a single application. Further, to lower the entry barriers, port charges at block and GP have been waived off. Tariffs for dark fibre are prescribed as Rs.2250/- per fibre per km per annum for service providers and Government agencies.

After such initiatives have been taken by the government, Telecom Service Providers have come forward for utilizing the BharatNet connectivity. Airtel has shown interest in 10000 GPs for taking 1 Gbps connectivity on lease while Reliance Jio, Vodafone and Idea are interested in taking 100 Mbps connectivity on lease in about 30000, 2000 and 1000 GPs respectively. The rolling out of services by TSPs in these GPs is expected to trigger the village level eco-system thereby widening the extent to cover more and more number of GPs in near future. This will give an impetus to broadband facilities in rural

India.

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LG making mockery of democracy: Delhi govt.

The AAP government on Thursday accused the Delhi Lieutenant Governor (LG) in the Supreme Court of making a “mockery of democracy”, saying he was either taking decisions of an elected government or substituting them without having any power.

A five-judge constitution bench headed by Chief Justice Dipak Misra, which is hearing pleas on who enjoys supremacy in governing the national capital, was told by the Delhi government that either the President, or the Chief Minister or the Council of Ministers had the power in event of difference of opinion between the government and the LG over an issue.

Referring to provisions of various statutes, senior advocate P. Chidambaram, appearing for the Delhi government said, “The LG is required to act as per aid and advice and, in case differences, the President will decide and there is no third way. The LG has no power.”

‘Mockery of democracy’

“But what is happening is that the Lieutenant Governor is taking decisions and substituting the decisions of the elected government...What the LG is doing is mockery of democracy,” he told the bench, which also comprised Justices A K Sikri, A M Khanwilkar, D Y Chandrachud and Ashok Bhushan.

On the issue of referring a matter to the President, he said only those matters, which deserved to be escalated to the President, should be referred, otherwise the President will be left with the administrative issues of Delhi only.

Mr. Chidambaram then dealt with the scenario following the Delhi High Court verdict that had held that the LG was the administrative head and said, “Now, in every matter, the LG is saying that you are denuded of power and I will decide“.

The policy decisions are the basis of an elected government and interference is “fine” if any decision is . “ultra—vires” of the Constitution or the Act, he said.

He also referred to the provisions of the Delhi Fire Services Act and said the vacancies in the department have to be filled by the State government.

“We do not have to understand the meaning of government from the statute. We will go back to the Constitution,” the bench said and enquired about who has been making appointments in schools run by the Delhi government.

It is Directorate of Education (DOE) of the Delhi government, Mr. Chidambaram replied, adding that there was 10,312 posts vacant in DoE presently.

So far as the issue of transfer, posting of IAS, IPS and IFS officers are concerned, the power of central government and the LG are already there, the senior lawyer said.

The Delhi government is not being allowed to do these functions with regard to other officers and staff, he said concluding his arguments.

The court would resume hearing on the petitions on November 14.

Earlier, the apex court had said there cannot be day—to— day impediments by LG in the elected

government's functioning as the responsibilities conferred on him are "not absolute".

It had also observed that the position of Delhi was different from other states and the elected government was under an obligation to apprise the LG about policy decisions.

END

Rajasthan cannot raise OBC quota, orders HC

The Rajasthan High Court on Thursday restrained the BJP government from implementing the provisions of a Bill passed in the State Assembly last month, by which it increased reservation for the Other Backward Classes (OBC) from 21% to 26%.

This is a setback to the government's effort to give quota benefits to Gujjars.

The Bill, passed on October 26, created the "most backward" category within the OBCs for providing reservation to Gujjars and four other nomadic communities in government employment and educational institutions.

With its passage, reservation in Rajasthan stood at 54%, exceeding the 50% ceiling mandated by the Supreme Court.

A Division Bench at the High Court's Jaipur Bench said the State government should obtain permission from the Supreme Court before going ahead with the new arrangement.

"Instead of bringing piecemeal legislation, why doesn't the government get the Constitution amended," observed the Bench, comprising Justices K.S. Jhaveri and V.K. Vyas.

END

Model villages no longer model for others

Last December, Telangana's Ibrahimpur village was much celebrated for becoming the first hamlet in south India to go cashless. This was not long after the central government invalidated high-value banknotes. While a majority of the nation's rural population struggled to eke out a living in the next couple of months, Ibrahimpur came out a winner and became a model village.

"Except for school-going children, about 1,200 villagers from 370 families were given debit cards," the *Hindustan Times* had reported, adding that all shops in the village had been provided with point of sale (PoS) machines by the state government and all households had functional bank accounts.

Almost a year later, the same newspaper has reported that the village has hardly any PoS machines, there are no automated teller machines (ATMs) in the vicinity, and rates charged by the banks on PoS machines are too high.

The cashless village of Ibrahimpur has returned to a cash-only mode of payment and is no longer celebrated by its people or the government. The authorities, too, seem to be simply shrugging at the situation.

What holds back Indian villages from climbing onto the digital bandwagon and staying there?

Firstly, it's a behavioural issue. The day 86% of India's currency by value was taken out of circulation, the government was aware that India is a largely cash-dependent economy, with as much as 85-90% of all transactions taking place in cash. It is not just a matter of convenience. Given the lack of digital literacy, coupled with a lack of literacy, the Indian population puts much more trust in cash transactions than it does on digital payments.

Let's take a look around and notice our parents in urban India. Are they as comfortable making payments online as we are? Then how can we expect an illiterate person, who is as new to digital payments as we are to driverless cars, to adopt mobile wallets or electronic transfers?

Unlike technology and infrastructure, that can be introduced/replaced overnight, behavioural patterns take years to change. On the other hand, right after demonetisation, the government lowered or removed electronic bank transaction charges and introduced the benefits of digital payments.

Less than six months later, the charges were back as usual and benefits erased.

When the government was not willing to change its attitude towards the less privileged (for whom even Rs10 as a transaction fee is a lot), how does it expect its citizens to change their behaviour?

Secondly, the availability and quality of infrastructure is poor. As much as 80% of India's population is still offline, according to the World Bank.

In a country with a population of 1.3 billion Indians, there are only 24.51 million credit cards and 661.8 million debit cards in circulation. All of them may or may not be actively used.

There are also only 200,000 ATMs; 62% of these are in urban locations, the rest in semi-urban or rural areas. At its highest capacity, Paytm only reaches 200 million users in India, most of them living in metro cities.

Even if we believe the government's figure of having reached 80,000 panchayats with fibre optic cable (and not connectivity) under BharatNet, there are still 170,000 panchayats that are yet to see the dawn of the information highway.

Many others that have connectivity often complain of its non-functionality. While more and more advertisements are encouraging consumers to buy 4G data, there are many villages that even lack 2G connectivity or basic telecom connectivity.

With an extremely high number of unconnected and digitally illiterate individuals, with little or no access to digital tools or technology, how can the government expect the nation go to cashless or become digital overnight?

Thirdly, joining the digital bandwagon involves cost. While you and I take going digital or going cashless for granted; it involves several layers of cost for a poor person.

A user of digital payments must have a mobile phone, preferably a smartphone, data pack for the phone and a decent income that does not pinch a consumer paying a "nominal" charge per transaction or a petty shopkeeper to pay a PoS machine rental cost that runs into a couple of thousand rupees. (The latter is the reason why most shopkeepers in Ibrahimpur have returned their PoS machines.)

Fourth, though technology is supposed to be a middleman, it requires another middleman for the poor. An illiterate person, with little or no exposure to digital tools and technology, cannot access the benefits of a computer or the Internet of his/her own. This technology requires them to go through another individual who is technologically sound and can facilitate the delivery of services.

Even to access their own bank details online, an illiterate person would require the help of another person who cannot only read and write but also operate a computer. Thus, technology, though a mediator, requires another layer of mediation for the rural poor.

Fifth, security is a concern that the government is yet to efficiently deal with. This is related to behavioural issues,too . Unless we strengthen and secure our digital ecosystem, our citizens will not be able to put their trust in technology. If a person is putting his/her trust in technology and the government, the latter owes it to its people to ensure that their data is tightly secured and the security of their personal and banking details is not jeopardized.

Ibrahimpur is no longer a cashless village and you can't blame its people. They tried their best. It is the system that has failed them. Interestingly, Ibrahimpur was also declared Telangana's first mosquito-free village in 2015. Let's hope the mosquitoes aren't forced to return to the village like cash.

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The pecking order

Lack of hygiene and cruelty towards birds (poultry), such as confining them in battery cages, has impacted those who consume meat or eggs. The health hazards include a rise in diseases such as cancer.

The Law Commission of India, in its 269th report, drafted two new laws to end the cruelty to birds and pave the way for more compassionate processes in the poultry industry. The rules are the Prevention of Cruelty to Animals (Egg Laying Hens) Rules of 2017 and the Prevention of Cruelty to Animals (Broiler Chicken) Rules of 2017.

The rules mandate that a more natural environment of housing that allows hens to perch and move about freely is a better alternative to the existing practice of battery cages. They call for better farming techniques.

The report condemns practices such as the breaking of beaks and the killing of young male chicks in the poultry industry. It recognises that the practice of unnecessary feeding of non-therapeutic antibiotics to the birds (which eventually leads to antibiotic resistance) directly impacts human health.

The Law Commission notes that the Indian poultry industry is unable to cater to an increasing consumer base which is demanding cruelty-free meat/organically-produced eggs. The lack of such an existing trend in the larger market has made it difficult for sellers and the hospitality industry to cater to the business.

On certification

The Commission’s report, published in July, further recommends certification of poultry farms by State animal husbandry departments. The certification should make a distinction between produce obtained from cage free egg farming and that obtained from battery cage farming.

In the draft Egg Laying Hens Rules, the onus is on a farmer to immediately report the “outbreak or suspected outbreak of any zoonotic or contagious disease or infection to the local authority, the State Board and the State government. Every farm shall have at least one room or enclosure for quarantining sick hens, or hens suspected to be sick”.

In the draft Broiler Chicken Rules, the Commission recommends that chickens should not be housed in cages or kept on wire or slatted floors. “Chickens shall be provided sufficient space for movement without any difficulty, to stand normally, turn around and stretch their wings.”

The Rules also mandate that indoor chickens should be provided with a “stimulating environment” to keep them active.

These include ramps, low perches, pecking blocks and straw bales to stimulate exploratory, foraging and locomotive behaviour and to minimise injurious pecking. Besides, poultry farms should sell chickens only to licensed slaughter houses.

The definition of harassment needs to be constantly updated, and the process for justice made more robust

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Economic Graffiti: Where India is ahead of China

It must be because of the 19th National Congress of China's Communist Party last month that there has been a flurry of conferences, meetings and discussions in recent weeks on the growth prospects of emerging economies, particularly China.

Both as a consequence of Donald Trump's dismal performance and Xi Jinping's remarkable leadership, China is beginning to rival the United States' global political influence. But, in terms of the economy measured by GNP or per capita income, China still has a long way to go.

One particularly interesting meeting I participated in was on the relative growth prospects of China and India. China's economic performance has been so good since 1978 to now, that the tendency for most analysts is to extrapolate that and put China ahead of India in terms of prospects. Yet, I have come to believe that, in terms of long-run economic prospects, there is reason to place India ahead of China. Since this is a contrarian view, it needs explanation.

China's economic performance from 1969, a year in which its growth rate was an unbelievable 16.9 per cent, and more relentlessly from 1978, has been outstanding. One reason for the success is the coercive power of its leaders. This enabled China to push through tough reforms. India's cacophonous democracy placed many more restraints on the leaders and often made it impossible for them to make essential reforms.

But I believe that these same traits that helped China grow risk becoming its Achilles's heel. Conversely, India's early investment in secularism, cultural openness, freedom of speech, which did make the early years difficult for economic growth, is now in a position to pay off.

According to the tenets of neoliberal economics, China's economy should not be growing. But since we have hard evidence of its growth, that debate should be treated as settled: Neoliberal economics is wrong. However, there are puzzling questions about China's phenomenal performance. A disproportionate amount of its GDP is produced by the state-owned sector, and the Communist Party has representatives on the boards of private companies. It is a top-down system that failed in most countries but seems to have succeeded in China.

What China's experience shows is that a coercive system, run by intelligent leaders, can yield dividends. Mao Zedong made big mistakes but it was under his leadership that the country invested in health and education, which has given China a remarkably talented workforce. Under Deng Xiaoping's leadership, critical space was created for market forces and, at the same time, a clever interventionist policy was devised for exchange rates, which promoted exports. And in Xi Jinping we see an extraordinary capacity for management and control as well as for global engagement.

Why, then, do I have concerns about China? Because a coercive, top-down system, after a while, acquires its own raison d'etre and, when that happens, the interests of those at the top run contrary to the interests of the nation. The coercive structure is then used to preserve political power rather than to promote development.

The key lesson is: A top-down coercive system may work for a while, but tends to backfire in the long-run. In a fascinating TedTalk, the celebrated British music conductor, Charles Hazlewood, pointed out how coercion and the dictatorship of the conductor can produce good music; but truly great music requires personal freedom for individual players and trust between the conductor and the orchestra. This is true not just for orchestras but for corporations and governments.

In societies like China and India, a special problem pertains to the control of corruption. Because corruption is so pervasive, leaders, even if they are genuinely keen on controlling it, face a choice of who they will go after, friends or the opposition. There is a natural tendency, stemming from the instinct of self-preservation, to go after the latter. Soon, the anti-corruption drive becomes an instrument of silencing dissent. Both India and China face this risk but it is bigger for China because of the absence of free media.

The Chinese top-down system is so all-embracing that it may be impossible to dismantle. Like in so many countries through history, when there is some malfunctioning of such a system, the economy gets short shrift over political power preservation. And, therein lies India's strength. Thanks to the nation's early commitment to democracy, openness and free media, it is now in a position to reap the benefits. India's high growth from 2005 has many drivers but those early (and undoubtedly costly) social and political investments are prominently among them. For this reason, I believe India is likely to outstrip China not in the next few years but in the long run. Its system, with vents open for continuous dissent, may make growth a little slower but, for that very reason, surer.

Democratic nations can, of course, take wrong turns. We have seen this happen in the United States in the early 1950s during the McCarthy years, in India in 1975-77 when Indira Gandhi imposed Emergency. But the traditions of freedom, and in particular the anonymous ballot, play an important role in bringing these to an end, as happened in the US and in India. That is the reason for my optimism for India's economy.

All forecasts, however, come with caveats; things can go wrong. I am not talking about a wrong policy intervention, such as the ill-conceived demonetisation of last November or the poor design of the otherwise desirable GST. India's big risk is the rise of right-wing religious vigilantism in recent years. These acts are led by people with a deep sense of inferiority about their own nation and so they like to shout from roof tops about their greatness five millennia ago and imitate fundamentalist and supremacist groups of other societies. The silencing of dissent and the free media, and the use of threats and even actual violence that has emerged from this group is a genuine risk for India. There is a small probability that this group, by its own insecurity and viral hatred of the other, will cause India to stall and stagnate. But I remain optimistic, and believe that this is just a phase.

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Can an FIR be filed against a sitting judge?

Can the police or any investigating agency file a first information report (FIR) against a sitting High Court or a Supreme Court judge and even the Chief Justice of India?

The question was repeatedly asked by Justice Arun Mishra in a Constitution Bench hearing on November 10. Justice Mishra was repeatedly heard telling advocate Prashant Bhushan that it is contempt to claim that the FIR in the medical college bribery case directly involves the Chief Justice of India. “It is contempt to say that the FIR names the CJI. Can there be an FIR against a sitting judge of a superior court? That is not the procedure,” Justice Mishra observed. So, what is the procedure? The answer is found in the majority judgment delivered by a five-judge Constitution Bench of the Supreme Court in the *K. Veeraswami* case.

The majority held that no criminal case shall be registered under Section 154 of the Criminal Procedure Code (an FIR) against a judge of the High Court, Chief Justice of the High Court or a judge of the Supreme Court unless the government first “consults” the Chief Justice of India. The justification given was that the CJI’s assent was imperative as he was a “participatory functionary” in the appointment of judges.

The *Veeraswami* case specifically dealt with the Prevention of Corruption Act in judiciary, but the majority judgment had extended its ambit to “any criminal case”.

“Due regard must be given by the government to the opinion expressed by the Chief Justice. If the Chief Justice is of opinion that it is not a fit case for proceeding under the Act, the case shall not be registered,” the majority judgment held.

The verdict held that if the the Chief Justice of India himself is the person against whom the allegations of criminal misconduct are received, the government shall consult any other judge or judges of the Supreme Court.

If the CJI allows the FIR to be registered, the government shall, for the second time, consult him on the question of granting sanction for prosecution.

The *Veeraswami* judgment holds that “it shall be necessary and appropriate that the question of sanction be guided by and in accordance with the advice of the Chief Justice of India”. The majority in the Constitution Bench classifies a judge as a “public servant”.

Consultation with the CJI while registering a criminal case against a judge, whether of the High Court or the Supreme Court, has been made mandatory to protect the independence of judiciary.

Similarly, the Supreme Court has also laid down guidelines for the arrest of a judicial officer of the subordinate judiciary.

Only a formal arrest

The Delhi Judicial Service Association versus State of Gujarat judgment of the Supreme Court was the product of the notorious treatment meted out to the Nadiad Chief Judicial Magistrate by a few Gujarat police officials. It had the country’s legal and judicial bodies in an uproar, compelling the Supreme Court to issue directions of the procedure to be followed while arresting a judicial officer. Primarily, the court held that a judicial officer “should be arrested for any offence under intimation to the District Judge or the High Court”.

The immediate arrest shall only be a “technical or formal arrest”, after which it should be immediately communicated to the District and Sessions Judge of the district concerned and the Chief Justice of the High Court.

The arrested judicial officer shall not be taken to a police station without the prior orders of the District Judge and no statements shall be recorded from him or her except in the presence of a counsel. He or she will not be handcuffed.

Section 3 of the Judges (Protection) Act of 1985 protects judges and former judges of the Supreme Court and the High Courts from “any civil or criminal proceedings” for any act, thing or word committed, done or spoken by him in the course of their judicial duty or function. No court shall entertain such complaints.

Section 77 of the IPC exempts judges from criminal proceedings for something said or done during judicial duties.

The government can initiate criminal proceedings against a sitting or former judge of a superior court under sub section (2) of Section 3 of Judges (Protection) Act, 1985 if it can produce material evidence to show that a judgment was passed after taking a bribe.

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The lowdown on the fight against criminal MPs

The Supreme Court has asked the Centre to come up with a scheme to establish special courts to try politicians facing criminal cases. The government itself was not averse to the idea. It will now have to spell out within six weeks the funds that it is ready to earmark for setting up these courts throughout the country. Thereafter, the court intends to address the issue of appointing judicial officers, prosecutors, and other manpower and infrastructure requirements. The court has indicated that it will interact with representatives of the States too, as it is the State governments that will be prosecuting most of these cases. In addition, the court has sought details of the status of 1,581 cases involving candidates who had disclosed details of pending criminal proceedings against them while filing their nominations for the 2014 elections. As per a March 2014 Supreme Court order, cases against politicians ought to have been disposed of within one year. In addition, it has sought details of fresh cases filed since then and the status of their disposal.

The matter came to court, thanks to a petition filed in public interest by Ashwini Kumar Upadhyay, an advocate who says he has been active in anti-corruption movements. He is also a spokesman for the Delhi unit of the Bharatiya Janata Party. Last year, he moved the Supreme Court for a direction to the Centre to come out with steps to debar all convicted persons from electoral politics for life. Under the present law, a convicted person is disqualified for contesting elections for six years from the date of release from prison. The petition also demands that special courts be set up to decide criminal cases related to those in the legislature, the executive and the judiciary within one year. He has submitted that 34% of the Members of Parliament have criminal cases pending against them and the government is doing nothing to decriminalise the polity. He has cited various reports of the Law Commission and other documents relating to electoral reforms and criminalisation of politics to back his claims.

Criminalisation of politics is an issue that worries independent institutions such as the Supreme Court and the Election Commission more than the political parties in the country. The perception that the political class manages to wriggle out of serious criminal cases because of a protracted and repeatedly postponed trial adds to the problem. While the law’s delays are quite well-known, it is obvious that such delays have a beneficial effect on influential accused, who invariably face the case while being free on bail. In most cases, delayed trials result in poor accused languishing in jail for long. Further, it is seen that many political leaders facing criminal proceedings continue to engage in routine political activity, fighting elections or even holding public office. It is not often that some of them quit office in the interest of a fair trial.

As the Supreme Court has already fixed a one-year deadline from the date of framing of charges for completion of trials involving Members of Parliament and Assemblies in an order passed in 2014, the court can be expected to take a tough stand on delayed trials against politicians. The establishment of special courts will be subject to the availability of funds, especially from the States. Some individuals affected by the order may some day question the validity of subjecting to them to proceedings in special courts rather than the regular courts of jurisdiction. The Criminal Procedure Code provides for a speedy trial. Under Section 309, once the examination of witnesses begins, the court should hold day-to-day hearings until all listed witnesses are examined. However, this provision is hardly adhered to. Merely complying with this may significantly expedite cases involving politicians. It is possible that the current proceedings may lead to some legal changes aimed at decriminalising politics. While the Election Commission has taken the stand that it may support the plea for debarring convicted persons from electoral contest for life, the Centre will have to make up its mind on whether it would endorse such a drastic measure.

K. Venkataramanan

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Collegium to take call on 40 names for HC judges

Ravi Shankar Prasad

The Supreme Court collegium would take a call on appointing 40 judges to nine courts, a senior functionary said even as 106 judges had been appointed to the constitutional courts this year.

The Law Ministry forwarded recommendations from nine High Courts to the collegium to appoint 40 judges.

The High Courts from where the recommendations had been received include Karnataka, Jharkhand, Gujarat, Madras and Tripura, the functionary said.

Law Ministry figures

By Law Ministry data, as on September 1, while the approved strength of judges in the 24 High Courts was 1,079, there were 413 vacancies and these High Courts were functioning with an effective working strength of 666 judges.

As per the procedure, a three-member High Court collegium recommends a name to the Supreme Court collegium.

The recommendation is initially sent to the Law Ministry, which attaches an Intelligence Bureau (IB) report about the candidate's record and forwards it to the SC collegium for the final call.

The collegium had recently said the judiciary and not the IB was a better judge of who should be part of the judiciary.

Commenting on the appointment of judges, Union Law Minister Ravi Shankar Prasad said that 126 judges were appointed in 2016 which was a record since 1989.

He said on an average 82 judges were appointed annually.

"As of now, 106 judges have been appointed in 2017. By December 31, we will surpass the 126 figure," Mr. Prasad said on Thursday at an event attended by Chief Justice Dipak Misra.

126 judges were appointed in 2016, which was a record since 1989

Ravi Shankar Prasad

Union Minister

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Justice in tumult: on the turmoil in Supreme Court

There is absolutely no doubt that the Chief Justice of India is the master of the roster. So, it is impossible to dispute the legal reasoning behind Chief Justice Dipak Misra's ruling that no one but he can decide the composition of Benches and allocation of judicial work in the Supreme Court. However, the circumstances in which he had to assert this authority have the potential to greatly diminish the court's lustre. The scenes witnessed in the court amidst troubling allegations of possible judicial corruption are worrisome for their capacity to undermine the high esteem that the judiciary enjoys. Chief Justice Misra chose to stick to the letter of the law, but there remain troublesome questions about potential conflict of interest in his decision to overrule Justice J. Chelameswar's extremely unusual order that delineated the composition of a Constitution Bench to hear a writ petition seeking a fair probe into the corruption allegations. It is a fact that in the Prasad Education Trust case, the petitions alleging that some individuals, including a **retired Orissa High Court judge**, were plotting to influence the Supreme Court, had been heard by a Bench headed by Chief Justice Misra. However, it would be perverse and irresponsible to attribute corrupt motives without compelling evidence. At the same time, by heading the Bench himself, the Chief Justice may have contributed to the perception that he will preside over a hearing in his own cause, rather than leaving it to another set of judges to reiterate the legal position on who has the sole say in deciding the roster.

Prashant Bhushan storms out of court after spat with CJI

Justice Chelameswar, the senior-most puisne judge, may have passed his order based on the petitioner's claim that there would be a conflict of interest were the Chief Justice to choose the Bench. But in doing so, he chose to ignore the principle that allocation of judicial work is the preserve of the Chief Justice. Both justices may have found themselves in a situation in which law and strict propriety do not converge. As for the lawyer-activists involved, it is one thing to flag corruption, another to foster the impression that they want to choose the judges who will hear them. The only way to end the current turmoil in the judicial and legal fraternity is to ensure that the Central Bureau of Investigation holds an impartial probe in the case registered by it. The involvement of serving judges may only be a remote possibility, but it is vital to find out whether the suspected middlemen had any access to them. An unfortunate fallout of the controversy is the perception of a rift among the country's top judges. To some, the charges may represent an attempt to undermine the judiciary. These perceptions should not result in the sidestepping of the real issue raised by the CBI's FIR: the grim possibility of the judiciary being susceptible to corruption. Tumult and turmoil should not overshadow this substantive issue.

Revving up infrastructure spending is necessary, but not sufficient

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Why ABBA must go: on Aadhaar

In a sickening way, October 2017 was like October 2002.

Fifteen years ago, in Rajasthan's Baran and Udaipur districts, there was a spate of starvation deaths. The government of the time made up fanciful stories to deny that the deaths had anything to do with hunger or government failure.

In October 2017, the **death of an 11-year-old Dalit child, Santoshi Kumari,** of Jharkhand, was widely reported. She had been pleading with her mother to give her rice as she slipped into unconsciousness and lost her life. The government insists that she had malaria but in video testimonies, her mother, Koyli Devi, says she had no fever. After Santoshi's death, more hunger deaths have been reported, of which at least one, Ruplal Marandi, is related to the government's Aadhaar experiment.

The starvation deaths in 2002 became the springboard for positive action on many fronts, which included the passing of judicial orders and even political action. Since then, there has been a perceptible improvement in programmes of social support including, but not limited to, the Public Distribution System (PDS). In Baran, it led to a recognition of the vulnerability of the Sahariyas — a tribal community in Baran — and a special PDS package consisting of free pulses and ghee being announced.

Dark clouds over the PDS

Similar action is required today. Instead, the government remains in denial. The Food Ministry in Delhi issued an order in late October that is silent on the crucial issue of reinstating wrongly cancelled ration cards and makes token concessions (with no guarantee of implementation).

Targets and the reality

For months, the Central government has been insisting on 100% Aadhaar "seeding" across schemes such as the PDS, Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) and pensions. Seeding refers to the practice of entering Aadhaar numbers for each household member on the ration card. It is a pre-requisite for the Aadhaar-based Biometric Authentication (ABBA) system, the practice of using an electronic point of sale (PoS) machine to authenticate each transaction. The government has made seeding and the ABBA mandatory in the PDS. As explained below, the distinction between seeding and the ABBA is important.

In their zeal to achieve 100% Aadhaar-seeding targets, some field functionaries just deleted the names of those who did not submit Aadhaar details. Others waited till the deadline and then struck off names. The government claims that all of these were "fake", detected due to Aadhaar, thus saving crores of rupees. Santoshi's family was one such example. According to the State Food Minister, their ration card was cancelled in July because they failed to seed it with Aadhaar.

Exclusions are not savings

Some people blame the aggrieved for failing to seed Aadhaar. But many of them are unaware of the seeding requirement. When pensions in Jharkhand suddenly stopped for many pensioners,

they had no idea why. No one had told them about Aadhaar. In some cases, the middlemen had seeded it wrongly. Others still had tried repeatedly and failed. Seeding is not as simple as it sounds.

Seeding is just one of the many barriers that the ABBA has created in the smooth functioning of the PDS. The ABBA requires that family members be enrolled for Aadhaar and correct seeding. At the time of purchase, the ABBA requires power supply, a functional PoS machine, mobile and Internet connectivity, State and Central Identities Data Repository (CIDR) servers to be 'up', and for fingerprint authentication to be successful.

All that data that Aadhaar captures

Ruplal Marandi's family passed the first two hurdles, enrolment and seeding, but was tripped at the last stage by the ABBA. For no fault of his own, the Marandi family was excluded from the PDS. His daughter told journalists that he had died of hunger as the family could not collect rations because of a biometric mismatch at the PDS shop.

There is enough evidence to show that the ABBA does not work. The Finance Ministry's latest Economic Survey, based on micro-studies, reports high biometric failure rates.

In Rajasthan, government data for the past year show that around 70% of cardholders are able to use the system successfully. The rest have either been tripped up by one of the ABBA hurdles or, less likely, they did not attempt to buy PDS grain. In Andhra Pradesh and Telangana, the ABBA's poster child States, it is used to disburse MGNREGA wages and pensions: biometric failure rates are between 8 and 14%. In some months, one in four pensioners returns empty-handed.

A case against ABBA

What most people don't realise is that the ABBA has no role in reducing corruption. If the ABBA helps reduce corruption, it might be worth fixing these failures. Quantity fraud is the practice of cheating on quantities sold. Neither seeding nor the ABBA can stop quantity fraud. In a survey in Jharkhand, dealers continue to swindle people by cutting up to a kg of their grain entitlement despite successful ABBA authentication. Identity fraud, for example in the form of duplicate ration cards, only requires Aadhaar-seeding; the ABBA is unnecessary. Two caveats on seeding: it can be foolproof against identity fraud only in a universal system. More seriously, it raises privacy issues.

Further, in Aadhaar's rulebook for example, an elderly person asking a neighbour to fetch their grain would count as identity fraud. In fact, it is flexibility that is lost when the ABBA is made mandatory.

Thus, each month, people are being forced to cross five meaningless hurdles in the form of electricity, functional PoS, connectivity, servers and fingerprint authentication in order to have access to their ration. Failing any one hurdle even once causes anxiety in subsequent months. Think of the ATM running out of cash, post-demonetisation, just when it was your turn. The resultant anxiety defeats the very purpose of such forms of social support. Failure in consecutive months leads to people giving up entirely. They stop trying. States such as Rajasthan were planning to treat such households as dead or non-existent.

The ABBA must be withdrawn immediately from the PDS and pensions in favour of alternative technologies such as smart cards. This will allow us to keep the baby (offline PoS machines with smart cards) and throw out the bathwater (Internet dependence and biometric authentication).

If the government continues to insist on the ABBA, there is only one conclusion that can be drawn. That it is actively trying to sabotage the PDS, which, quite literally, is a lifeline for the poor.

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India needs a federal green agency

The thick smog that has enveloped north India over the past few days is a public health emergency. The callous response by various government agencies to what has become an annual affair is nothing short of scandalous. There is a deeper problem here. As every state blames the other, the weak policy response is also an indication of an institutional vacuum to deal with public goods issues in a federal political system.

The story so far is well known. Citizens living in the National Capital Region are among the millions who have been left gasping as farmers in neighbouring states burn stubble on their farms, before preparing them for the winter sowing cycle. The immediate responses include calls for a ban on such biomass burning. However, as Mridula Ramesh of the Sundaram Climate Institute has written in Firstpost, a far better alternative to a unilateral ban is to examine solutions based on an understanding of why farmers burn stubble in the first place. Any viable policy response should take into account the needs of the farmers as well as city dwellers.

A key principle of policy design is that the intervention should focus on the root of the problem—stubble burning, in this case. The distortion should be dealt with directly. In this case, is it possible to change the incentives for farmers who burn biomass?

The standard economic solution is to impose a Pigouvian tax on farmers to ensure the polluter pays for his actions. Such a tax would change incentives by increasing the cost of stubble burning. However, the Pigouvian solution is neither politically practical nor just. A far better way to deal with the effects of stubble burning comes from the work of Ronald Coase.

Coase argued, in a landmark paper published in 1960, that the solution to externalities such as pollution is not unilateral action but complex bargaining between different interest groups. The bargaining will be based on how much farmers value stubble burning on the one hand and how much city dwellers value clean air on the other.

One example of the use of the Coasean method is the landmark New York City Watershed Agreement of 1997. New York had been asked by government regulators to build an expensive water filtration plant to improve the quality of water it supplied citizens. To reduce costs, the city negotiated with upstream farmers who were polluting the watershed area to either buy out their land or pay them to change farming methods.

In the case of the smog in north India, it could mean that farmers should be paid to invest in better technologies to deal with the stubble left over from the previous harvest. A subsidy will change their incentives. Such a Coasean bargain is premised on two preconditions. First, property rights need to be assigned. Second, there needs to be a credible agency to manage the negotiation. India has neither right now.

The assignment of property rights in this case is devilishly difficult. The more practical solution is that the state governments of Delhi, Punjab and Haryana be considered the representative agencies for their respective citizens. They should negotiate on how the cost of changing farming practices will be shared. A first step will be to estimate the amount to be paid for every hectare of farmland that is shifted away from stubble burning.

The second problem is the lack of an institutional structure to deal with such federal negotiations, especially when the three state governments are run by three different political parties. This is where the Union government needs to step in as a coordinating agency. It can also offer to bear half the fiscal costs of any green bargain between the three states.

However, a better solution over the long term is to set up a federal agency like the Environmental Protection Agency in the US, with powers to get states to the bargaining table. The exact contours of such an agency will need to be debated by climate change scientists, economists, environmental activists and political parties. The current institutional vacuum needs to be filled.

There is also a broader lesson here. The ongoing fiscal decentralization is welcome, but India still needs an effective Union government to hold a complex country together. One challenge that needs central coordination is the provision of national public goods—be it national defence or monetary stability or environmental quality.

The winter smog that chokes millions of people every year needs to be dealt with through a long-term institutional strategy rather than hasty administrative responses each time citizens choke.

Does India need a new institutional architecture to deal with multi-state problems such as air pollution? Tell us at views@livemint.com

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Supreme Court, diminished

The Supreme Court of India is facing its worst crisis of credibility since the Emergency. With an occasional exception, the quality of the court's reasoning, the inconstancy of its judgment, the abdication of its constitutional role in some cases, and its overreach in others, are already denting its authority. But the institutional crisis that the Supreme Court has now created for itself will puncture more holes in the authority that it so valiantly tried to exert. It will also create the conditions under which it will be easier to legitimise diluting judicial independence.

The current crisis was occasioned by an order passed by Justice J Chelameswar to constitute a five-judge bench in a petition filed by CJAR that demanded that a SIT be constituted to look into an alleged corruption scandal pertaining to a case involving a medical college. There are two issues: Can the chief justice be part of the hearing, since the scandal allegedly implicates a judgment the CJI wrote, even though he has not been named in the FIR? Second, could a constitution bench be constituted bypassing the chief justice in violation of the current procedure through which such benches are constituted? This is not the place to recount the ugly sequence of events that transpired. But consider the different ways in which the judiciary has now rendered itself vulnerable.

First, there is the vulnerability that arises from the CBI itself. There are issues of corruption in the courts. The judiciary has failed to find a mechanism to deal with allegations of corruption within its ranks. Every justice in the court needs to be above suspicion. But a lot of care needs to be exercised so that the anti-corruption measures taken do not undermine the independence of the judiciary. This is not a very popular thing to say, but we should also consider the possibility that the threat of being investigated by the CBI, or speculative naming (or suggestion in a CBI report), can itself also be an instrument of seeking recusals or undermining the independence of judges, as is sometimes done with other government officials. This subtle institutional challenge to the judiciary is not outside of the realm of possibility. More than the conduct of Justices Misra and Chelameswar, the judiciary will have to think of how it will deal with instances where the Chief Justice of India or other justices becomes hostage to possible CBI innuendo.

The challenge of fighting corruption in the judiciary will be this: How do you do this in a way that does not make the judiciary vulnerable to implicit blackmail and leads to undermining its independence? But a clamour for reforms that undermine independence in the name of accountability will be a natural consequence of the current chain of events.

It is precisely because such a danger looms that the judiciary's conduct needs to be above board. And here, the judiciary has made itself doubly vulnerable. A court carves out its authority by the compelling character of its reasoning on behalf of constitutional values. We have had a succession of chief justices who have failed to exercise intellectual leadership and the present chief justice is no exception. It is not difficult to understand the chief justice's consternation. He has not been named in an FIR, and the prospect of a CJI's integrity being questioned on the basis of an unaccountable CBI is not a prospect we should relish. He was also institutionally humiliated by one of his brother justices, who disregarded existing court procedure and appointed a constitutional bench. But notwithstanding this, this is clearly a chief justice who seemed not to understand the concept of conflict of interest. He let his consternation on a procedural matter get the better of his judgment in a cringingly unbecoming way. He also gave the impression of not giving counsel a proper hearing. In the way he has constituted benches, he has also shown deep distrust in the capabilities of his senior colleagues. By setting himself up as a judge in his own cause and setting up a bench whose composition looks arbitrary, he has undermined the authority of the judiciary.

But Justice Chelameswar's order setting up a five-judge bench also made the judiciary vulnerable. Surely, there were better ways of securing the recusal of the chief justice and setting up a bench in a way that did not depart from existing court procedure or humiliate the chief justice. The danger is that the pursuit of justice and the need to project virtue often results in a grandstanding in its own right. Rather than build a robust judicial consensus, judges project their own individual heroism.

Between a chief justice who does not recognise conflict of interest, and justices who think the only recourse is public grandstanding, the judiciary will not be able to survive. Many learned counsel have defended Justice Chelameswar's move by invoking Article 142 that gives judges the power to do whatever it takes to secure justice. But the use of Article 142 has also become a sign of immense judicial indiscipline, where judges can easily ride roughshod over other procedural proprieties.

Taken together, both the chief justice's and the judge's conduct highlights one obvious fact: There is no Supreme Court left any more. In expanding its powers, the Supreme Court first replaced the rule of law with the rule of the court (they are not the same thing); now the rule of court has been replaced with the anarchic will of individual judges. The Supreme Court has effectively ended an institution. There is no real command structure left. On procedural matters, whether it is protocols for appointing judges, or handling conflicts of interest, the court is all over the place.

Communication between judges seems to have broken down to the point where the senior leadership of the court is incapable of getting together and coming up with common sense procedural solutions to cases like this. The distrust amongst judges, as evident in the ways benches are being constituted, seems extraordinarily high. And the sense of injured virtue amongst individual judges seems to be trumping any consideration of the reputation of the judiciary as a whole.

There are lots of legal nuances to the case at hand. But the court's loss of external credibility combined with internal anarchy does not bode well for Indian democracy. Instead of becoming a constitutional lodestar in our turbulent times, the court has itself become a reflection of the worst rot afflicting Indian institutions.

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Ill-judged

The confrontation that has broken out in the Supreme Court over the last few days is unedifying and disheartening. As Chief Justice of India Dipak Misra and Justice J. Chelameswar take on each other, and as lawyers take sides in the tussle in open court, the case itself — arising out of the arrest of a former high court judge for allegedly holding out a promise to influence a decision by the highest court in a matter concerning medical college admissions — has been overtaken by the spectacle it has occasioned. At stake, now, is something much more important and large: The reputation and credibility of an institution that has earned itself the title of India's most trusted, a protector of citizens' freedoms, an upholder of the constitutional poise. What is more, this public display of divisions within comes at a time when the court appears at its most vulnerable without. In the last three years or so, the independence of the judiciary has often seemed besieged in the face of a strong political executive that has sought to use the electoral mandate to subdue dissent and circumscribe other institutions, including in the crucial matter of the appointment of judges.

In this courtroom drama, all the lead players are in the dock, even though each of them — from lawyer for the petitioner, Prashant Bhushan, to Justice Chelameswar and CJI Misra — has a formidable record of advancing judicial independence. By listing the case in question before a constitution bench comprising the five senior-most judges, Justice Chelameswar can be accused of playing with procedure, and of attempting to bypass the CJI in his role as "master of the roster". It is the CJI's prerogative, and his alone, to constitute a bench and to direct that a particular matter be heard by that or any other bench. The argument that Justice Chelameswar did so in order to prevent a conflict of interest — even though the CJI's name does not figure in the FIR, a judgement previously given by him is implicated in the case — is undermined by the ill-judged manner in which Justice Chelameswar sought to make his point. At the CJI's door lie two key questions: How to address potential conflict of interest issues and how to assert the primacy of his position in a manner that strengthens rather than divides the institution.

Judicial corruption is an important issue but the judiciary cannot address it by turning on itself. If its seniormost judges give the impression of using a case to settle scores with each other, the institution will only lay itself open to further onslaught by an executive asserting its right of way with all the agencies at its command, including the CBI. Most of all, it will be failing in its duty to live up to the trust and faith that the people of India have come to vest in it.

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Creamy layer case referred to Statute Bench

Reopening the debate on the application of “creamy layer” for reservations for the Scheduled Castes and the Scheduled Tribes in government jobs, the Supreme Court on Tuesday referred the question to a Constitution Bench.

A Bench of Justices Kurian Joseph and R. Banumathi said clarity is required on the “application of creamy layer in situations of completing claims within the same races, communities, groups or parts thereof of SC/ST communities notified by the President under Articles 341 and 342”.

This question on the application of creamy layer principle in SC/ST quotas comes 11 years after a five-judge Constitution Bench in the *M. Nagaraj* judgment of 2006 had decided that creamy layer should be excluded from the reservations for the Scheduled Castes and Scheduled Tribes in government jobs. Legal experts note that the Mandal Commission and E.V. Chinnaiah cases had confined the creamy layer concept to the Other Backward Classes section.

The two-judge Bench’s order is based on a batch of petitions for clarity on Article 16 (4), which deals with the State’s powers for providing for appointments or posts for “any backward class of citizens”; on Article 16 (4A), which arms the State with power to make provisions for quota in promotion with consequential seniority to SC/ST communities; and finally Article 16 (4B) on unfilled reservation vacancies.

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‘Can Delhi get executive powers like other States’

The Supreme Court on Tuesday raised a question whether the constitutional scheme on division of executive powers between the Centre and the States can be made applicable to the Union Territory of Delhi.

A five-judge Constitution bench headed by Chief Justice Dipak Misra, which is hearing pleas on who enjoys supremacy in governing the national capital, put the query after noting the submission of senior advocate Indira Jaising that the executive powers of Delhi should be ascertained in the light of the constitutional scheme providing a clear division of powers between the States and the Centre.

‘Two captains of a ship’

Ms. Jaising, appearing for the AAP government, said having “two captains of a ship” would lead to chaos.

“How are these provisions applicable in the case of Union Territory of Delhi,” the bench, also comprising Justices A. K. Sikri, A. M. Khanwilkar, D. Y. Chandrachud and Ashok Bhushan, asked.

“Everything boils down to day-to-day administration. How can the Centre say that you (Delhi government) cannot have the executive power. I can understand this position on legislative powers,” Ms. Jaising said.

She said the court should not be guided by the nomenclature of Delhi as a Union Territory while interpreting Article 239AA and the executive powers of the Delhi government and there should be no “blurring of responsibilities” between the State and the Centre.

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Aadhaar needs a privacy law

The Supreme Court's (SC's) landmark judgement upholding our right to privacy has intensified the debate on whether and how Aadhaar infringes on this right. With the upcoming five-judge Constitution bench hearing petitions on Aadhaar, these debates will soon be settled by the highest court.

Meanwhile, the Unique Identification Authority of India (UIDAI) has unequivocally asserted that Aadhaar meets the privacy test. But many others, both within the government's fold and outside it, have said that Aadhaar can become an instrument to profile individuals, surveil them, and suppress dissent.

The boring but important truth is that both sides are right—to some degree. Aadhaar, if unregulated, can be a tool to abrogate our privacy. However, Aadhaar is only a tool. Other tools of the government—such as CCTV cameras, permanent account number (PAN) cards, Digital India, among others—are also capable of invading privacy. When dispassionately analysed, each of these tools, including Aadhaar, meet some, but not all, principles of adequate data privacy.

The solution, therefore, is not to annul Aadhaar on the grounds of data privacy. Like we do with any tool in the public domain, we need to avail of its benefits and manage the risks, while evaluating whether the benefits are worth the risks. To this end, we need two parallel initiatives to complement the court's decisions.

One, rigorous, and independent research such as the Indian School of Business' digital ID research initiative is vital to ascertain the benefits and risks across Aadhaar's uses. This can help decide which uses should be furthered, adjusted, or even dropped. This is critical because Aadhaar's uses are proliferating, but most of the available numbers on its impact are disputed and alternative narratives are based on journalistic accounts or small surveys. Two, we need an independent regulator to protect data privacy and regulate data initiatives (as argued in the data privacy Bill introduced by Baijayant Panda). This regulator must be backed by a robust law, and be competent to understand the nuances of data privacy and keep pace with new developments. This is urgent. We are many strides into a digital economy and are already suffering the consequences of this void.

Debate on Aadhaar and privacy has largely reached an impasse as those involved often use different definitions of data privacy. This can be avoided by the universal adoption of National Privacy Principles. Aadhaar is often analysed in a vacuum, without paying enough attention to national benchmarks (such as PAN, voter ID, passport, etc.). In this article, we examine data privacy issues with these factors in mind.

One potential harmful abuse of Aadhaar is using the unique number to link data sets that previously existed in silos. Depending on the breadth of data sets seeded with Aadhaar, they can be merged to uncover a person's "food habits, language, health, hobbies, sexual preferences, friendships, ways of dress, and political affiliation", as the SC worried in its judgement on right to privacy. Not only is this objectionable in and of itself, such profiling can be used to discriminate against individuals and stifle dissent.

Aadhaar is not the only unique identifier in our lives that can be used to link databases. Our mobile numbers, email addresses, PAN, voter ID, ATM card numbers and IP addresses can all serve this purpose (and indeed have).

Four features, however, make Aadhaar particularly potent for database linking. One, it covers

almost all Indian adults. Two, the database has practically no duplicates (according to UIDAI), enabling a higher quality of linking. Three, it uses a 12-digit unique identifier, making linking easy. Four, over 120 government agencies require Aadhaar to provide services, paving the way for the first step of data linking—seeding each individual database with Aadhaar numbers. The irony is that the quality of the Aadhaar database (the first three reasons) leads to its widespread use (the fourth reason), making it susceptible to misuse.

Unauthorized database-linking violates almost all the National Privacy Principles, including "Purpose Limitation", whereby "a data controller shall collect, process, disclose, make available, or otherwise use personal information only for the purposes as stated in the notice after taking consent of individuals."

An operative phrase here is "data controller". UIDAI's chief executive officer, Ajay Bhushan Pandey, recently reaffirmed that Aadhaar meets the principle of Purpose Limitation. He is partially right: while Aadhaar can be used for database linking, UIDAI as a "data controller" does not engage in this practice (though it cannot prevent it either). However, other "data controllers" (say, criminal investigation agencies or credit card companies) with access to data-sets seeded with unique identifiers, such as Aadhaar, can link databases without due notice or consent and use it nefariously.

Therefore, attacking only Aadhaar for the larger privacy risk of database linking is not based on a practical understanding of how linking works. Aadhaar is only the means to an end. If Aadhaar ceased to exist, the threat of database linking using unique identifiers will endure, albeit with higher difficulty. This reinforces the need for a strong data privacy law and regulator to curb and manage database-linking practices.

Ronald Abraham is a partner at IDinsight and co-author of State of Aadhaar Report 2016-17

Research contributions from Shreya Dubey and Akash Pattanayak. This is the first of a two-part series on Aadhaar and privacy.

Comments are welcome at theirview@livemint.com

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A question of probity

On November 10, a five-judge Constitution Bench of the Supreme Court led by the Chief Justice of India, in a case concerning corruption arising out of certain judicial proceedings, declared that the Chief Justice is the **master of the roster** with the sole prerogative to determine which Bench of judges gets to hear which cases. That the Chief Justice, as the head of the judiciary, determines the roster is a platitude that pales in public significance to the critical role of the Chief Justice as the embodiment of moral authority of the entire judicial system. This moral authority suffered a fatal blow when the Chief Justice chose to reassert his own administrative powers in the face of allegations concerning the possible lack of probity of senior public functionaries. The situation demanded statesmanship — unfortunately the Court engaged in whataboutery, raising the spectre of contempt of court, only to drop it finally.

A criminal conspiracy

The genesis of this episode lies in the filing of petitions by Prasad Education Trust before the Supreme Court and Allahabad High Court. The trust operated a medical college whose permission to run certain courses had been declined. Justices Dipak Misra, Amitava Roy, P.C. Pant, A.M. Khanwilkar and D.Y. Chandrachud heard the parties and passed several orders in the Supreme Court; Justices Narayan Shukla and Virendra Kumar-II passed an interim order in Allahabad High Court.

A simultaneous investigation by the Central Bureau of Investigation (CBI) indicated a possible criminal conspiracy to ensure a favourable judicial order in this matter. According to its FIR, two persons managing the affairs of the trust, approached a retired judge of Allahabad and Odisha High Courts, Justice I.M. Quddusi, through Sudhir Giri of the Venkateshwara Medical College (part of Venkateshwara University, in whose case another judgment had been passed by Justice Dipak Misra in the Supreme Court). Quddusi recommended the filing of a petition before the Allahabad High Court, in which partial relief was granted.

The tumult in Supreme Court over corruption: the story so far

Subsequently, when the matter again reached the Supreme Court, the FIR reveals that Quddusi and his associates assured the trust of getting the matter “settled” in the Supreme Court through “their contacts” and engaged Biswanath Agrawala, a resident of Bhubaneswar. Agrawala claimed “very close contact with senior relevant public functionaries” and demanded significant gratification for settling the case. Quddusi, Agrawala and four associates have now been arrested for offences under the Prevention of Corruption Act and the Indian Penal Code.

Since the FIR indicated an attempt to fix a judicial proceeding, the Campaign for Judicial Accountability and Reforms filed a writ petition in the Supreme Court requesting that a Special Investigation Team under a retired Chief Justice of India be set up. This request was made since it was apprehended that leaving the investigation to the CBI might mean allowing the government to influence judges who would be brought under investigation.

The merits of such a request are a distinct matter. However, propriety would plausibly demand that since the FIR pertained to a case where Justice Misra had been the presiding judge, as Chief Justice of India, he would not perform his default role of allocating Benches for determination of this case or exercise his prerogative of hearing the case himself. Doing so would imply that the Chief Justice would not be “like Caesar’s wife”, the puritanical standard of propriety the Court expects of public servants. The same principle would apply to any judge in the Supreme Court and Allahabad High Court who had earlier participated in the proceedings. Recusal would not be an

admission of complicity; instead it would be an affirmation of the principle that justice not only be done but be seen to be done.

Diminishing propriety

Unfortunately, by allocating the matter to a Division Bench, the Chief Justice gave this principle a go-by. It is moot whether the Bench entrusted by the Chief Justice would ensure justice or not — the critical point is that such a Bench chosen by the Chief Justice was congenitally defective. This impropriety set off a chain of improper actions — filing of a second petition in the same matter, hearing of the second petition by Justice J. Chelameswar, the second-most senior judge of the Supreme Court, and an order by his Bench that the matter should be heard by five senior-most judges of the Court.

Justice in tumult: on the turmoil in Supreme Court

To be certain, devoid of context, each of these actions is improper. But the impropriety in these actions is technical and not substantive. That it is the prerogative of the Chief Justice alone to list matters and constitute Benches is a convention based on long practice. However, when doing so would cast a shadow of doubt on the process of justice delivery itself, it is not only proper but also necessary that this task is performed by another judge. The Court cannot stand on formality and sacrifice substantive justice for a vacuous conception of prerogative power.

This episode of plausible administrative impropriety was unfortunately compounded by the Chief Justice constituting a five-judge Bench, including himself, to hear the matter on the judicial side. A resounding reiteration of the Chief Justice's own powers to determine the roster, annulling the order of Justice Chelameswar and hearing supportive bystanders in the Court, were signs of a Court ignoring the need for justice to be seen to be done. Again, whether the right decision was reached or not is moot — a decision was reached in which the Chief Justice was unarguably judge in his own cause. That itself suffices to make this judgment bad in law.

Glasnost and perestroika

To blame one individual or another, or attribute motives for this episode would be to miss the wood for the trees. Instead, there are two structural issues of consequence to anyone who cares about judicial integrity. First, the cardinal principle that the Chief Justice of India is the master of the roster must be re-examined. Although there can scarcely be any argument against it as a tenet of judicial discipline, it would be naive to consider it an absolute principle of justice delivery.

In the U.K., Lord Chancellors had, for long, used the prerogative of Bench selection to serve partisan ends. As scholar Diana Woodhouse writes, Lord Halsbury wanted the power of trade unions reduced and selected Benches accordingly; Lord Hailsham chose Benches to constrict his colleague Lord Atkin's ability to progressively interpret the law and Lord Loreburn's cherry-picking of judges to reach favourable conclusions is well-known. The history of such abuse of prerogative led the U.K. to statutorily establish two leadership positions in the new Supreme Court — that of the President and the Deputy President, together with a professional registry and a Chief Executive. The unchecked power of the Chief Justice of India to constitute Benches must be similarly circumscribed. Doing so does not amount to mistrusting the Chief Justice, but rather being cognisant of changing demands of accountability.

Second, much has been said of the indiscipline demonstrated by Justice Chelameswar's Bench in listing a case and determining the Bench that hears it. Discipline lies at the heart of judicial functioning — its complex rules on filing, unwritten conventions of seniority, expected decorum in courtroom seating are all critical components to ensure institutional discipline. But a single-minded

reiteration of such formal norms appear perverse when confronted with a case where the personal probity of individuals in the judiciary is in doubt. If only to conclusively dispel such doubt, an independent investigation was warranted. This might well have been the logical conclusion of the technically improper order passed by Justice Chelameswar's Bench listing the matter before the five senior-most judges.

For several senior members of the Bar to focus solely on this apparent impropriety while remaining blind to graver improprieties elsewhere and larger questions of probity is symptomatic of a legal fraternity that steadfastly refuses to practice the values it preaches to others. Closing ranks and taking refuge in hidebound norms of propriety is like playing the proverbial fiddle, while pretending that public confidence in the judiciary is a gift that will keep on giving.

Justice Kurian Joseph of the Supreme Court wrote in respect of judicial appointments that a 'glasnost' and 'perestroika' is required if the system is to regain public confidence. If the moral authority of the Chief Justice of India and the Supreme Court is to be restored, something similar is needed urgently. Otherwise the Supreme Court will soon be a far cry from the institution we all revere. Some might say, it already is.

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Human Rights And Wrongs

In a recent case in the Supreme Court, the National Human Rights Commisson (NHRC) referred to itself as “a toothless tiger”. The NHRC’s feeling of helplessness and willingness to portray itself in this light is a matter of grave concern. The commission’s complaints may be legitimate, but has it done what it can within its limited powers?

While the NHRC may plead before the Supreme Court about its limitations, the public perception about it has deteriorated. The recent submissions to the Sub-Committee of Accreditation of the Global Alliance of National Human Rights Institutions concerning the NHRC’s review this week speak of its journey from a toothless tiger to a spiritless body.

A case in point is that of Khurram Parvez, a human rights defender from Kashmir who was barred at the Delhi airport from travelling to Geneva on September 14, 2016, where he was to attend the United Nation Human Rights Council (UNHRC) and meet representatives of UN bodies concerning the situation in Kashmir. On September 15, 2016, on his return to Srinagar, Khurram was arrested under the Public Safety Act (PSA).

On September 16, 2016, Human Rights Defenders Alert (HRDA) approached the NHRC to intervene in the case through an independent investigation. Ignoring the recent order of the Delhi High Court in Priya Pillai’s case, the NHRC called for reports within four weeks from the Director General of Police of Jammu and Kashmir (J&K) and the Foreigners’ Regional Registration Office in New Delhi. It did not issue a notice to the Bureau of Immigration, Ministry of Home Affairs (MHA), which is also its parent ministry.

The NHRC received the response only after 12 weeks on December 13, 2016. However, the response was not submitted by the main respondents but by the joint director of the Intelligence Bureau (IB). The IB claimed Khurram has “close links with pro-separatist leaders”, who with an “intention to internationalise the ongoing disturbance in Kashmir and castigate Indian policies had approached the UN High Commissioner for Human Rights and other UN Special Rapporteurs”. The report also cited “four pending criminal cases (against Khurram) for inciting violence and hence damage would have caused to national interest if Khurram was allowed to go out of the country”. The NHRC did not share with the HRDA the response from the IB (which was obtained through the RTI) terming it as “secret” and solely on this basis, closed the case on April 19, 2016.

The IB’s reference to the four criminal cases against Khurram, leading to his arrest under the Public Safety Act, was quashed by the J&K High Court on November 25, 2016 terming it “illegal”, and “arbitrary” as the detaining authority did not elucidate which of his activities was found to be “prejudicial to the security of the State of maintenance of public order”.

In the meantime, on September 16, 2016, two of the UN’s Special Procedures (SPs) jointly wrote to the Government of India (GoI) citing serious concerns of reprisals faced by Khurram for cooperating with the UN of which the Indian state is a member. The GoI responded with the same IB report submitted to the NHRC. As a response on October 11, 2016, five UNSPs jointly wrote to the GoI expressing concerns about the state describing Khurram as someone “operating under the garb of human rights”.

The order by the J&K High Court and communications by the UNSPs all pre-date the response by the IB to the NHRC. The NHRC has on several occasions boasted of its independence, referring to its leadership comprising a former chief justice of the Supreme Court.

The question here is about the nature of the failure of the NHRC: Was it a deliberate failure or an

inability to understand basic human rights laws and standards? What has increasingly become a disturbing norm in the NHRC today is its opaque modus-operandi in cases of grave human rights violations.

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Rajasthan conversion Bill sent back

The State government has said that it reminded the Centre in June to clear the Bill, which defined “conversion” as “renouncing one’s own religion and adopting another” through “fraudulent means.”

The Rajasthan government is making attempts to get the President’s nod for the Bill that has been pending since 2008, the year it was passed.

The State government recently filed an affidavit in the court in response to a notice on a *habeas corpus* writ petition seeking production of 22-year-old Aarifa, who has converted from her religion and married a Muslim man. The court had asked whether there was any law or procedure in force in Rajasthan that governed conversions. The MHA examines Bills passed by the Assemblies that are repugnant to Central laws before they get the President’s assent to become a law. BJP president Amit Shah and RSS chief Mohan Bhagwat have batted for “anti-conversion” laws at the national level, but the subject is on the State List of the Constitution and the Centre has no jurisdiction in the matter.

The Rajasthan Dharma Swatantraya Vidheyak was passed by the Assembly in 2008 during the previous stint of Chief Minister Vasundhara Raje. The Bill has provision for prison terms of up to five years. It also contains a clause for cancellation of registration of organisations held guilty of abetting conversions.

The Bill, which was sent for the President’s approval in 2006 too, was returned by Pratibha Patil.

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Privacy issues exist even without Aadhaar

In part I, I argued that while Aadhaar can be a tool to infringe upon our right to privacy, it is merely one such; there exist other tools that can be similarly exploited. This becomes evident when you analyse each privacy issue related to Aadhaar using the National Privacy Principles framework, and compare Aadhaar's data privacy risks to other national ID systems. We need an independent data privacy regulator, backed by a robust law, to safeguard against the risks.

Here, we explore two such data privacy issues: data disclosure and voluntariness (database linking was analysed in part I).

Data disclosure

According to the National Privacy Principle on data disclosure, "a data controller shall not disclose personal information to third parties, except after providing notice and seeking informed consent from the individual for such disclosure".

On paper, the Aadhaar Act appears compliant with this principle as Section 29 prohibits the disclosure of personal information. Exceptions exist for courts to request demographic data, and for joint secretaries and higher ranks to request biometric data; the latter on the grounds of "national security". However, greater clarity is required on whether individuals will be informed of data disclosures.

In practice, however, data disclosures well beyond these exceptions have taken place. A study by the Centre for Internet and Society found that nearly 130 million Aadhaar numbers had been published online by four government departments. In many cases, these were published along with information on "caste, religion, address, photographs and financial information". If someone manages to steal these individuals' fingerprints as well (which is becoming less difficult), one possibility is that Aadhaar-linked bank accounts can be cleaned out using micro-ATMs.

Demographic data disclosure, however, is not limited to Aadhaar. For transparency reasons, state election commission websites disclose the personal information of every person registered to vote online. Agencies scrape these databases and sell them.

Like database linking, the onus of abiding by the principle of data disclosure is on the "data controller". The four government agencies that disclosed Aadhaar data—not the Unique Identification Authority of India (UIDAI)—are the relevant data controllers in this case. However, UIDAI has not pressed charges against them; under the Aadhaar Act, it is solely authorized to do so. Given UIDAI's role of working with the government to enable and encourage the use of Aadhaar, it should not also be responsible for regulating them. Additionally, the Election Commission's data disclosure norms demonstrate that the issue is bigger than Aadhaar.

This, therefore, points to the critical need for a data privacy regulator to investigate and penalize unauthorized disclosure of sensitive personal information. A strong regulator, with a clear law, will also serve as an effective deterrent for negligent disclosure practices.

Voluntariness

The ability to voluntarily opt in and out of data systems, based on informed consent, is central to the National Privacy Principle of "Choice and Consent". Once an individual opts in, the principle clarifies that they "also have an option to withdraw (their) consent given earlier to the data controller".

With regard to opting in, UIDAI has maintained that Aadhaar enrolment is voluntary. However, Section 7 of the Aadhaar Act and various orders by government agencies require Aadhaar to access basic services. Though exceptions are allowed, in practice they are implemented inconsistently, making Aadhaar near-mandatory.

To be sure, the choice principle states that data controllers can choose not to provide services if an individual doesn't consent to provide data, "if such information is necessary for providing the goods or services". However, we need more explicit guidelines on what features satisfy this condition, something that can be defined in a data privacy law.

With regard to opting out, no such UIDAI provision exists. One argument is that more data increases UIDAI's capability to establish the uniqueness of new enrollees. However, it is unclear why this is the case because even if millions opt out of Aadhaar, UIDAI's ability to guarantee the uniqueness of new enrollees compared to existing enrollees doesn't diminish.

While voluntariness is actively discussed with Aadhaar, the same is not true for other IDs and data initiatives. For example, fingerprints are collected to issue Indian passports, but the use of this is not clear—raising concerns around voluntariness as well as purpose limitation.

Through this analysis, it becomes clear that data privacy issues exist even without Aadhaar. To tackle the risks to privacy, India requires a strong, competent and independent data privacy regulator, backed by a robust law.

With the recent Supreme Court judgement and upcoming hearings, we have a unique opportunity to strengthen our institutional ability to manage future risks. We must seize this opportunity to try and secure a privacy-protected future.

Ronald Abraham is a partner at IDinsight and co-author of 'State of Aadhaar' report 2016-17.

Research contributions from Shreya Dubey and Akash Pattanayak.

This is part 2 of a two-part series on Aadhaar and privacy.

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Strengthening India’s institutions

The late political scientist and historian Benedict Anderson called the nation an imagined community, which brings together people who find common cause to forge a new identity. That entity functions because of its institutions. These institutions are not made only of bricks and mortar, though those are necessary; they become meaningful if they represent the collective will of the people, drawn from values that underpin the idea of that nation. Physical structures, like parliaments and courts, matter; how they function matters even more.

The legislature, the army, the judiciary and the media are important structures of the nation. The first sets the rules, the second defends the state, the third determines what is right and what’s wrong, and the fourth blows the whistle when things go wrong. They have their roles and boundaries. Institutions are strengthened or weakened depending on how the individuals temporarily in charge of the institutions act.

During a campaign speech in Himachal Pradesh, Prime Minister Narendra Modi referred to the opposition Congress party as termites, asking voters to “wipe them out”. At a time when a minister refers to journalists as presstitutes and the ruling party’s stormtroopers call any dissident “anti-national”, Modi’s remarks may not seem surprising. But words have consequences. Modi is not the first politician to use such language—Congress president Sonia Gandhi had referred to him as “maut ka saudagar”, or a trader of death, and in a robust democracy such language may be seen as part of campaign rhetoric. The late Bal Thackeray’s speeches were no different. But as American academic Susan Benesch argues, the impact of such language on a gullible population may have devastating consequences. Political demagogues have often used language that dehumanizes the opponent to undermine them. If repeated, in extreme cases, it can lead to mass violence, as happened in the case of the sustained, hateful propaganda of Radio Mille Collines in Rwanda in the 1990s. Alert to such consequences, the UN human rights high commissioner criticized Katie Hopkins, a British columnist, after she referred to refugees as “cockroaches”.

In a recent article in The Indian Express, Ramachandra Guha was surprised that the army chief, General Bipin Rawat, called for a Bharat Ratna for Field Marshal Cariappa, India’s first army chief. “If others can get it, I see no reason why he should not,” the newspaper quoted him as saying. Whether Cariappa deserves the honour or not is not the issue. Rawat may genuinely believe he does; others can argue for other generals. But the right forum for the general to express that view is through private correspondence with the appropriate authorities. Democracies have clear roles and responsibilities for the civilian government and the military leadership. When those roles get confused, as India has seen in its neighbourhood—Pakistan and Bangladesh in particular—the consequences can be disastrous. In democracies, the army should be visible sparingly—at parades, and only occasionally, to help with emergency disaster relief, and heard from even less.

Latin phrases come to mind while thinking of the judiciary. *Nemo judex in sua causa*, or no man shall be a judge in his own cause, and *quis custodiet ipso custodes*, or who will guard the guardians. The astonishing events at the Supreme Court on 10 November were a salutary reminder of the dangers a court faces when litigants are concerned about its impartiality. The case in question is complicated, involving corruption charges against a retired high court judge. Two litigants wanted a special investigations team to inquire into the case. While one judge appointed a panel of five judges to hear the case, the chief justice intervened and assigned the case to another bench. On Tuesday, the court dismissed the petition, and warned the litigants not to go forum shopping. There is no suggestion of any wrongdoing here, but the manner in which the matter was heard and disposed of is profoundly disappointing, if what was reported—lawyers not being party to the case speaking before the court, and the lawyer making the submission not being able to argue his case—is true.

There is another guardian, the media, which can hold all these institutions accountable. But peculiarly enough, the broadcast media seems to misunderstand its role; instead of the government, it enthusiastically and vociferously holds the opposition to account for the government's failures. After the Emergency was lifted, Lal Krishna Advani said the press was asked to bend, but it crawled. Forty years later, without being asked to bend, much of the broadcast media crawls.

During the Emergency, V.S. Naipaul travelled through India and wrote a scathing indictment of what had become of India. In *India: A Wounded Civilisation* (1977), Naipaul wrote: "The turbulence in India this time hasn't come from foreign invasion or conquest; it has been generated from within. India cannot respond in her old way, by a further retreat into archaism. Her borrowed institutions have worked like borrowed institutions; but archaic India can provide no substitutes for press, parliament, and courts. The crisis of India is not only political or economic. The larger crisis is of a wounded old civilization that has at last become aware of its inadequacies and is without the intellectual means to move ahead."

Naipaul's critique is harsh, but it is up to India to prove him wrong, because it has the intellectual means to do so. All it needs is popular will.

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Overreach: on the T.N Governor meeting govt. officials

It is an act of constitutional impropriety for the Governor of a State to review the work of government officials when an elected regime is in place. **By holding meetings in Coimbatore** to review programmes, the Tamil Nadu Governor, Banwarilal Purohit, has left himself open to charges that he has breached the constitutional limits of his office. Mr. Purohit met the District Collector, the Commissioner of Police and the Corporation Commissioner without any Minister present. The Governor has attempted to explain his interactions, saying he was seeking to familiarise himself with the administration and that he could appreciate its work in implementing schemes only if he got to know all details first hand. But this is hard to accept as a justification and his plan to visit all districts for a similar review does not augur well for parliamentary democracy. Article 167 of the Constitution says it is the Chief Minister's duty to communicate to the Governor all decisions of the Council of Ministers relating to the administration and proposals for legislation. It enjoins the Chief Minister to furnish such information relating to the administration as the Governor may call for. If Mr. Purohit wants to understand how schemes are being implemented, he can seek details from the Chief Minister, Edappadi K. Palaniswami, instead of holding meetings in the districts. There may be occasions when the Governor may need to ask a top bureaucrat or the head of the police force for a report on a major incident or development, but even that should be for the limited purpose of getting an accurate picture before sending a report to the Centre.

The political context in which Mr. Purohit is exhibiting his zeal to familiarise himself with the administration is significant. There is a sense of drift in governance in Tamil Nadu, and it is widely believed that it is running on 'autopilot'. The Chief Minister's majority in the Assembly is in doubt, given that the Speaker had to disqualify 18 dissident legislators to shore up his support within the legislature party. An impression has gained ground that the Bharatiya Janata Party is seeking to fill the perceived political vacuum, but is caught in a bind on how to go about it because of its lack of a political base in Tamil Nadu. Therefore, the Centre is seen as leaning on the State government and the ruling AIADMK to help the BJP gain a political foothold. The prospect of the State coming under a spell of President's Rule if the present regime formally loses its majority in the House is on everyone's mind. Therefore, Mr. Purohit's familiarisation exercise is bound to be read for signs of what the future has in store. Mr. Purohit will do well not to fuel such speculation. None of this, of course, implies that the Governor should refrain from taking an independent view of any matter or legislative proposal. But his functioning should be within the bounds of established norms and conventions.

Revving up infrastructure spending is necessary, but not sufficient

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In the database: on registration of marriages

In October, the Supreme Court held that that **sexual intercourse by a man with his wife who is below 18 years of age is rape**. The judgment was interpreted as a strong warning against child marriage. Similarly, in July 2017, the Law Commission of India suggested amendments in the Registration of Births and Deaths Act, 1969 to make registration of marriages compulsory, like births and deaths, as an effective antidote to social evils like child marriage, bigamy and gender violence.

Instead of a standalone legislation to make marriages compulsory, the Commission recommended changes in the 1969 Act which would act as a “guiding principle” for States to legislate under Entry 5 of the Concurrent List of the Seventh Schedule to the Constitution taking into consideration the size of the population and sheer diversity of customary forms of marriage. However, State laws on the subject should be confined to the procedural, and not substantive.

The inclusion of marriages in the Births and Deaths Act would supplement the domain of family laws that already exist. It would not aim to remove, abolish or amend specific religious/cultural practices and laws that are accepted under personal laws prevailing in India.

The wedding certificate

The Commission suggested that the Registrar who is responsible for the registration of births and deaths be responsible for the registration of marriages as well. The Amendment Bill should provide that if the birth or marriage or death is not registered within the specified time limit, then the Registrar shall, on the payment of a late fee, register the death or birth (a) within a period of 30 days; (b) within one year, only with the written permission of the prescribed authority; and (c) after one year, only on an order of a First Class Magistrate. It provides for a penalty of 5 per day in case of delay in registration of “marriage without a reasonable cause”.

If the Registrar finds that any entry of a marriage in the register kept by him is erroneous or fraudulent or improper, he may correct or cancel the entries after hearing the parties concerned, subject to State government rules.

In a marriage solemnised abroad, and in which one of the parties is Indian, the Registrar shall verify it was conducted as per the laws of that country and the marriage satisfies conditions laid down in Section 4 of the Foreign Marriage Act, 1969.

The Commission called for village panchayats, local civil bodies and municipalities to create awareness about compulsory registration of marriages and to make marriage certificates mandatory for getting benefits or welfare like agricultural loans.

The definition of harassment needs to be constantly updated, and the process for justice made more robust

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Boost to infrastructure facilities for judiciary

Cabinet approves continuation of the Centrally Sponsored Scheme to improve judiciary infrastructure

The Union Cabinet chaired by Prime Minister Shri Narendra Modi has approved continuation of the Centrally Sponsored Scheme (CSS) for Development of Infrastructure Facilities for Judiciary beyond 12th Five Year Plan i.e. from 01.04.2017 to 31.03.2020 to be implemented in a Mission Mode through National Mission for Justice Delivery and Legal Reforms with an estimated outlay of Rs.3,320 crore.

The Cabinet also approved setting up of an on-line monitoring system with geo-tagging by the Department of Justice enabling data collection on progress, completion of court halls and residential units under construction, including for future projects as well as better asset management and formulation of norms and specification of court halls and residential units to be constructed under Scheme for implementation throughout the country for future.

Benefits from the Scheme:

The Scheme will increase the availability of suitable number of Court Halls and Residential Accommodations for Judges / Judicial Officers of District and Subordinate Courts all over the country including at District, Sub-District, Taluka, Tehsil and Gram Panchayat and Village levels. This will help in improving the functioning and performance of the Judiciary across the country in reaching out to every citizen.

Financial assistance:

The central assistance is provided to the State Governments / UT Administrations under the Centrally Sponsored Scheme (CSS) for development of Infrastructure Facilities for Judiciary for construction of court halls and residential units for Judicial Officers / Judges of District and Subordinate Courts. The funds sharing pattern for Centre and State is 60:40 in respect of States other than North Eastern and Himalayan States. The funds sharing pattern is 90:10 in respect of North Eastern and Himalayan States; and 100% in respect of Union Territories. This will help for completion of on-going projects for construction of 3,000 court halls and 1,800 residential units for judicial officers of District and Subordinate Courts.

Monitoring of the Scheme

An on-line monitoring system will be set up by the Department of Justice enabling data collection on progress, completion of court halls and residential units under construction as well as better asset management.

Regular meetings of the Monitoring Committee may be organised in various States with State Chief Secretaries and PWD officials to enable speedy and good construction. It may also be monitored if the funds released by the Centre are released without delay onward to PWD by the State Governments.

Background:

Central Government augments the resources of the States in this regard through the Centrally Sponsored Scheme (CSS) for development of infrastructure facilities for Judiciary which is being implemented since 1993-94. The central assistance is provided to the State Governments / UT Administrations under the Scheme for construction of court halls and residential units for Judicial Officers / Judges of District and Subordinate Courts.

AKT/VBA/SH

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Allow Kambala races without cruelty, Centre tells SC

The Centre on Friday supported the cause of having Kambala races in Karnataka, provided steps are taken to avoid cruelty to the participating bulls.“Unless cruelty is involved, Kambala should be permitted,” Attorney General K.K. Venugopal told a three-judge Bench led by Chief Justice of India Dipak Misra.

When asked why the Karnataka government is “so bothered” about Kambala that it has to promulgate an ordinance, Mr. Venugopal said “all State governments have to appease popular sentiments”.

The AG invited the court to lay down objective conditions so that there is no unnecessary pain or suffering caused to the bulls.

People for Ethical Treatment of Animals (PETA), which has moved the Supreme Court, said the ordinance violates the Animal Welfare Board of India versus A. Nagaraja verdict of the Supreme Court which made illegal any practice or activity inflicting bovine animals with unnecessary pain and suffering as “inherent cruelty”. The court posted the case for further hearing on November 20.

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Shia Board submits ‘settlement’ before SC

Waseem Rizvi

Shia Waqf Board chairman Syed Waseem Rizvi has moved the Supreme Court for permission to place on record a “settlement” worked out by the Uttar Pradesh Shia Central Waqf Board with a majority of non-Muslim stakeholders in the Ram Janmabhoomi-Babri Masjid land dispute.

The application comes ahead of the scheduled hearing of the dispute in the Supreme Court on December 5.

Under the settlement, the Ram temple could be built on the Ayodhya site while a mosque would be constructed in Lucknow.

The application filed by Mr. Rizvi said the Shia Board has mooted the proposal for a “long-term settlement of this dispute which has resulted in a feeling of acrimony among these communities”.

“The Uttar Pradesh Shia Central Board of Wakfs proposed a compromise before the Hindu brothers, who are fighting the cause of the Ram Mandir and majority of whom are parties in the litigation,” the application said.

Mr. Rizvi, in the application filed through advocate M.C. Dhingra, said the settlement proposal was worked out after a series of meetings, discussions and deliberations with the concerned Hindu brothers and stakeholders,” including the various mahants.

The application reinforced the right of the Shias to take a decision on the fate of the Babri Masjid, which it claimed is a “Shia wakf”.

“The *mutawallis* of Babri Masjid have always been Shia Muslims and the last known/recorded *mutawalli* of the Babri Masjid was a Shia Muslim,” it said.

Shia rights

The Shia Board has “all the rights to take a prudent decision on the issue which in fact relate to larger national interest”, the application said.

It gave a list of mosques in Islamic countries which “have been removed”. In connection with “the sanctity of mosques being constructed by unjust people”, the application recounted an “incident recorded in the books of Islamic theology where a masjid named Masjid-al-Diirar was ordered to be demolished and burnt down by the Prophet of Islam”.

In August, the Shia Board moved the Supreme Court claiming that the 15th century Babri Masjid was a Shia waqf (endowment) and the Sunnis, who have been at the frontlines of the 70-year-old Ram Janmabhoomi-Babri Masjid title dispute, were mere interlopers led by “hardliners, fanatics and non-believers” who do not want an amicable settlement with the Hindu sects involved.

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Losing the war, winning the peace

India is not short of memories on 1962. The India-China War ended fifty-five years ago to the day, yet each winter brings back reminiscences of the conflict. The Chinese assault on the Thagla Ridge early in the morning of October 20, 1962, which turned simmering military tensions into open war. The doomed struggle of ill-equipped jawans. Jawaharlal Nehru's awkward radio address to Assam, just as the Chinese seemed poised to enter the plains. The unilateral ceasefire that China announced on November 21, 1962, saving Assam but ending India's chance of recovering the Aksai Chin. And above all, the scar of national humiliation at the hands of a triumphant China.

But is there all there was to the war? One can doubt it. Standard histories of 1962 almost completely ignore a key aspect of the conflict: the way the authorities and people of Arunachal Pradesh — the North-East Frontier Agency (NEFA), as it was then called — experienced it. Look away from the fighting and the India-China War takes on quite a different hue, one where the war does not end at the point of ceasefire and where the roles of winners, losers and bystanders aren't so neatly divided.

The October shock

When large-scale fighting erupted between China and India, it did not take long for NEFA's civilian officials to realise their entire administration was in jeopardy. By October 23, Tawang had to be abandoned. Meanwhile, Chinese troops were advancing onto Walong in the east. The retreat of the Indian Army entailed that of the civilian administration. Dozens of administrative centres were evacuated, leaving most of northern NEFA unoccupied and open for Chinese occupation. Thousands of Tibetan refugees followed suit, along with many local people (*Picture shows refugees fleeing from the India-China border war, in 1962*). Evacuee officials focussed on organising relief, and even began considering their permanent rehabilitation elsewhere in Assam. At the time, India's loss of NEFA seemed in danger of becoming permanent.

The war formally came to an end with China's unilateral ceasefire on November 21, but the crisis did not. Gains in the Aksai Chin aside, the People's Republic of China (PRC) now occupied significant portions of NEFA. Officially this was temporary, but everything was done to complicate India's return. Government stores, supplies, equipment, furnishings, weapons and often buildings were systematically damaged, eaten or destroyed. The People's Liberation Army (PLA) pointedly delayed its departure, keeping Indian troops and officials in the dark about it. On January 17, 1963 the Chinese still occupied Tawang. The local official only resumed his duties a few days later. In military terms, the India-China War had lasted only a month. As an occupation, almost three.

Battle for hearts and minds

What most worried India's frontier officials was how the inhabitants would receive them back. India's state presence in NEFA was recent. The Raj's eastern Himalayan frontier had barely been administered and remained poorly explored. Civilian administrators had made huge efforts since 1950 to consolidate India's sovereignty over the region; but given the difficult terrain, wet climate, and financial and human shortages, doing so required local inhabitants' cooperation. Gaining the loyalty of the Mishmis, Monpas or Adis was an aim in itself, if they were to become Indian citizens. Winning them over was key. The problem was that Indian officials' state-building per force had to contend with the PRC's own efforts in nearby Tibet. China too faced an uphill struggle to concretise its hold there, and it too needed border inhabitants' cooperation. Yet, in this porous Himalayan borderland criss-crossed by social, cultural or family ties and regular movement, people had ample opportunity to observe and compare what India and China respectively offered

— both the good and the bad. The result was a fierce competition for Himalayan hearts and minds, well before military and diplomatic tensions appeared between the two countries.

This struggle for authority and legitimacy did not stop when fighting erupted. On the contrary, the 1962 War offered China a chance to gain the upper hand in it. There is much evidence that the PRC's occupation of northern NEFA was a sort of public relations exercise *vis-à-vis* local people. Indian officials came back to Tawang to find that no women had been molested and nothing taken without payment; houses, monasteries and possessions were intact. Chinese troops had brought in gifts and exotic goods and made every effort to convince people that their religion, customs, and freedom would be respected. In fact, China had one key message for the people of NEFA: it was there to liberate them from India.

The story of NEFA's occupation suggests that, among other things, the 1962 War was China's chance to prove to Himalayan people that it was the better state — whereas a weak India could neither protect nor deliver. The unilateral ceasefire and withdrawal helped preserve the image of Chinese invulnerability and benevolence *vis-à-vis* local inhabitants while preventing an international escalation of the conflict. "Tell us to come back and we'll free you from India," departing troops reportedly said.

In an ideal scenario, Himalayan inhabitants would do just that. More realistically, a China-supported, anti-Indian uprising might erupt like in nearby Nagaland — and India would stop posing a threat to China's sovereignty in Tibet.

Going back

India's frontier officials had every reason to worry about returning to NEFA. Would people welcome them back considering China's impressive wartime performance? To their own surprise, the answer was by and large yes. Many inhabitants expressed both their disappointment at having been left behind and their support for Indian authorities' return. They made concrete demands to ensure that the disappointment would not re-occur, and that their support would be rewarded. Something strange was happening. China had won the war on both fronts, military and political; yet this had not been enough to win people over, especially since many people had heard of repression in Tibet from refugees passing through. In hindsight, China's demonstration of superiority seems to have been counter-productive. The Indian state might be weaker and less efficient, but from the inhabitants' standpoint it was less of a risk, and offered more chance for negotiation.

On that count, we may need to revise our standard narrative of 1962. The war was not just about winning more territory (in the Aksai Chin) or teaching India a lesson (which it did). It was also about winning over hearts and minds. And if the PRC did win the war, on that front it also lost the peace.

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The danger of electoral bonds

If being ranked 100th out of 190 countries in the World Bank Ease of Doing Business Index was a matter of national celebration, how do we celebrate India being ranked a far more impressive 19th out of 180 countries in the Paradise Papers leaks? Though more than 700 Indians figure in the documents cache, celebrations have been muted, to say the least.

Link with shell firms

All these Indians are on the list for one reason: their association with shell companies set up to siphon vast sums of money out of India and into a tax haven under the cloak of secrecy. The best part is that it's all legal, more or less.

An interesting case unearthed from the Paradise Papers pertains to a law firm's refusal to supply nominee directors to two Mauritius-based companies of an Indian business group due to fears of 'round-tripping' — a term that denotes the (illegal) routing of Indian-origin illicit funds from a tax haven (in this case, Mauritius) back to India.

What if there was a legal channel for companies to round-trip their tax haven cash to a political party? If this could be arranged, then a businessman could lobby for a change in policy, and legally funnel a part of the profits accruing from this policy change to the politician or party that brought it about.

Well, the government introduced precisely such a scheme earlier this year: electoral bonds. These bonds share with tax havens the two characteristics that make the latter such attractive destinations for black money: secrecy and anonymity.

Transparency in political funding is the global norm. The 255th Law Commission Report on Electoral Reforms observed that opacity in political funding results in "lobbying and capture" of the government by big donors. The lower the transparency in political funding, the easier it is for the super-rich to buy the kind of government they want.

According to the NGO, Association of Democratic Reforms, 69% of the income of political parties is from unknown sources. But even the 31% from known sources pertains only to the income that the parties declare to the Income Tax (IT) department.

Thanks to black money, the real incomes of political parties are far greater than their declared income. In other words, not only is the source unknown for the greater chunk of a party's income, even the very existence of this income is 'unknown', as it is not captured in any official record — either with the Election Commission (EC) or with the IT department. Put simply, transparency in political funding in India is already abysmal.

This is despite the existence of declaration norms, traditionally governed by four legislations: the Representation of the People Act (RPA), the IT Act, the Companies Act, and the Foreign Contribution (Regulation) Act (FCRA). Under these laws, political parties have to declare the source and the amount donated for all contributions above 20,000.

Similarly, companies have to declare in their profit and loss (P&L) statement the party-wise break-up of political donations. Also, a company must be at least three years old to contribute to a party. Its contribution cannot be more than 7.5% of its average net profit in the three preceding years. And parties cannot accept foreign contributions.

But declaration to an institution is not the same as disclosure to the public. Even with all these stipulations, as of today, it is barely possible to glean, via multiple Right to Information applications, a rudimentary idea of political parties' sources of funding. Now electoral bonds are set to eliminate even this smidgen of transparency.

The government set the ball rolling with the Finance Act 2016, which amended the FCRA to allow political parties to accept donations from foreign companies. This year, the Finance Act 2017 did the rest, by amending the RPA, the Companies Act and the IT Act. The Reserve Bank of India Act was also amended to enable the issuance of electoral bonds, which would be sold through notified banks.

What electoral bonds do

Electoral bonds are essentially bearer bonds that ensure donor anonymity. They are like cash, but with an expiry date. Let's say company 'X' wishes to contribute 100 crore to political party 'Y'. It could buy ten electoral bonds of 10 crore each from bank 'A'. These bonds would carry only a serial number and not the identity of the buyer.

X would have these bonds deposited in Y's designated account with bank 'B'. B would know that this money belongs to Y but it doesn't record the fact that it has come from X.

The cluster of amendments around electoral bonds makes the scheme's intent amply clear: first of all, they eliminate the 7.5% cap on company donations (which means even loss-making companies can make unlimited donations); also gone is the requirement for a company to have been in existence for three years (paving the way for fly-by-night shell companies); and finally, companies no longer need to declare the names of the parties to which they have donated (so shareholders won't know where their money has gone).

As for political parties, they no longer need to reveal the donor's name for contributions above 20,000, provided these are in the form of electoral bonds. In a nutshell, a foreign company can anonymously donate unlimited sums to an Indian political party without the EC or the IT department ever getting to know. It is difficult to imagine a better instrument to ease the flow of black money into the coffers of political parties.

Danger to democracy

By far the most pernicious feature of electoral bonds is their potential to load the dice heavily in favour of the ruling party. In the hypothetical transaction above, only bank 'A' knows the identity of the donor, while bank 'B' knows only the identity of the recipient.

But both the banks report to the RBI which, in turn, is subject to the Central government's will to know, though it remains to be seen if the former's autonomy can withstand the latter. So, only the ruling party — and no one else — can ascertain which companies donated to the Opposition parties. It is then free to use the organs of the state to gently dissuade (or retaliate against) these misguided donors. What this means is that once the scheme for electoral bonds is notified, the Opposition parties may struggle to raise adequate funds to put up a fight. The implications for democratic politics are obvious.

The government's stated rationale for introducing electoral bonds was that they would protect donors from harassment by enabling anonymous contributions. But this argument falls flat as only the government is in a position to harass, or alternatively, protect, donors from harassment by non-state harassers.

Going forward, there is little doubt that democracy will be the biggest casualty if electoral bonds see the light of day. Former Chief Election Commissioner S.Y. Quraishi has suggested an alternative worth exploring: a National Electoral Fund to which all donors can contribute. The funds would be allocated to political parties in proportion to the votes they get. Not only would this protect the identity of donors, it would also weed out black money from political funding. But without pressure from the citizenry, it is unlikely to interest a political class hell-bent on insulating itself from public accountability.

The definition of harassment needs to be constantly updated, and the process for justice made more robust

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Aadhaar or else

Recent events in Jharkhand shed some useful light on the damage done by compulsory biometric authentication in the Public Distribution System (PDS). This is increasingly a countrywide problem. The reason is that Aadhaar-based biometric authentication (ABBA) is being relentlessly pushed by the Central government, with little attention to the consequences.

In Jharkhand, ABBA was first made compulsory for PDS users in Ranchi district in August 2016. By June 2017, it was mandatory in about 80 per cent of the ration shops across the state. This meant, of course, that Aadhaar itself was compulsory — no Aadhaar, no food. But making ABBA compulsory for PDS users creates two more serious hurdles for them.

First, ABBA requires Aadhaar seeding. This means that PDS users must not only have an Aadhaar number, but also get this number correctly linked to their ration card. This is far from trivial. One difficulty, among others, is that seeding often creates inconsistencies between databases — in this case, between the ration-cards database and the Aadhaar database.

For instance, names may be spelt differently in the two databases. At least some of these inconsistencies need to be resolved for successful seeding. The middle class recently discovered the hassles of Aadhaar seeding in the context of the PAN-Aadhaar linkage. The problem is much worse for underprivileged people. Many of them depend heavily on middlemen, who extract a price at every step.

There is another difficulty with Aadhaar seeding. How is it to be achieved in good time, when people have no reason to hurry? The obvious way, also used by banks and telecom companies, is to set a deadline and threaten to discontinue benefits after that. If the deadline keeps getting postponed, however, the threat may not serve the purpose.

At some point, therefore, the threat needs to be carried out. That is what happened on March 27, when the Chief Secretary of Jharkhand ordered Aadhaar-less ration cards to be cancelled. As a result, large numbers of people found themselves excluded from the PDS for no fault of their own. To add insult to injury, the Government of Jharkhand claimed that the cancelled cards were fake. But recent verification exercises in three blocks (Khunti, Mahuadanr and Manika) confirm that most of the concerned cardholders are alive and eligible. In much the same way, job cards and even pensions have been cancelled en masse in Jharkhand for the sake of achieving 100 per cent Aadhaar seeding.

The second hurdle is monthly biometric authentication at the ration shop. This requires connectivity, a functional point of sale (PoS) machine, operational servers, and of course, successful fingerprint recognition. Official statistics and independent surveys point to high failure rates in Jharkhand — perhaps 10 to 20 per cent. The victims often come from vulnerable groups, such as elderly persons and manual labourers with rough fingerprints. Even those for whom ABBA eventually works, face much inconvenience, anxiety and waste of time.

Some readers may feel that these hassles are a small price to pay for removing corruption from the PDS. There is growing evidence, however, that ABBA has revived rather than reduced PDS corruption in Jharkhand, at least for now.

The main source of PDS corruption in Jharkhand is what people there call “katauti” (cuts). This means that the PDS dealer gives them a little less than their due — say 23 kg of foodgrain per month instead of 25 kg. In a recent survey of the PDS in 32 randomly-selected villages of Jharkhand, we found that the average katauti was the same (about 7 per cent) before and after

ABBA was introduced. This is not surprising: If dealers have the power to give people less than their due, biometric authentication does not help.

Meanwhile, a new form of corruption has emerged. Whenever biometric authentication fails for some PDS users, the dealers have some leftover grain (mainly rice, in Jharkhand) at the end of the month. Predictably enough, the leftovers are routinely siphoned off.

Since transactions are now digitised, the Government of Jharkhand has a record of these leftovers. A few months ago, it decided to recover the leftovers, so to speak, by telling dealers that they should distribute from the accumulated leftovers until the gap is made up. This, however, led to chaos in the PDS, because many dealers had already sold the leftovers in the market. The problem was not just that they had nothing to distribute the next month, but also that if they did not distribute, the same situation would arise again the following month, since the recorded leftovers would remain the same.

Short of buying rice in the market to distribute in the ration shop, the only way out for corrupt dealers is to rig the digital records. This is not easy, but it can be done. In Beltoli village of Latehar district, we found out one of the methods being used for this purpose. Under the National Food Security Act, every person listed on a “priority” ration card is entitled to 5 kg of foodgrain per month.

In Beltoli, however, the dealer is telling people that this entitlement is now restricted to the names (not just the cards) that have been seeded with Aadhaar. Judging from 25 testimonies collected there this month, this practice enables the dealer to distribute just 60 per cent of the prescribed quantity while entering the full amount in the PoS machine. Further enquiries in neighbouring villages suggest that this practice is not confined to Beltoli.

We heard of other methods too, including one whereby dealers simply tell people that it is “Modi’s wish” that they should undergo biometric authentication at least once without getting any rice. This enables them to record fake transactions with abandon. All this illustrates a more general point: In Jharkhand, ABBA has not reduced the power of PDS dealers, which is the real root of corruption. On the contrary, it has increased people’s dependence on the local dealer, because it is the dealer who knows the rules of Aadhaar seeding and biometric authentication.

In response to the public outcry that followed recent starvation deaths in Jharkhand, the Central government has directed state governments to ensure that those for whom ABBA does not work are able to buy their PDS rations using an “exemption register”. This, however, is just a band-aid solution. If further tragedies are to be avoided, the Central government should stop insisting on ABBA and let the states use more appropriate technologies for last-mile monitoring.

END

For the record- The state cannot plead its inability to handle the hostile audience problem: SC

In 1989, the Tamil Nadu government stopped the release of a Tamil film, 'Ore Oru Gramathile', which criticised caste-based reservation, after some political groups in the state threatened violence. However, a three-judge bench of the Supreme Court headed by Justice K.J. Shetty upheld the right of the filmmakers to make movies that criticise government policies and ruled that "freedom of expression, which is legitimate and constitutionally protected, cannot be held to ransom by an intolerant group of people".

The SC also said: "The State cannot plead its inability to handle the hostile audience problem. It is its obligatory duty to prevent it and protect the freedom of expression." S. Rangarajan vs. P. Jagjivan Ram, considered a landmark judgment in the history of censorship in India, is relevant again in the context of the controversy over Sanjay Leela Bhansali's 'Padmavati'.

Excerpts from the judgment:

Movie is the legitimate and the most important medium in which issues of general concern can be treated. The producer may project his own messages which the others may not approve of. But he has a right to "think out" and put the counter appeals to reason. It is a part of a democratic give-and-take to which no one could complain. The State cannot prevent open discussion and open expression, however, hateful to its policies…

In the affidavit filed on behalf of the state government, it is alleged that some organisations like the Tamil Nadu Scheduled Castes/Scheduled Tribes People's Protection Committee, Dr Ambedkar People's Movement, the Republican Party of India have been agitating that the film should be banned as it hurt the sentiments of people belonging to Scheduled Caste/Scheduled Tribes. It is stated that the general secretary of the Republican Party of India has warned that his party would not hesitate to damage the cinema theatres which screen the film.

Some demonstration made by people in front of The Hindu office on March 16, 1988 and their arrest and release on bail are also referred to. It is further alleged that there were some group meetings by Republican Party members and Dr Ambedkar People's Movement with their demand for banning the film. With these averments it was contended for the State that the exhibition of the film will create very serious law and order problem in the State.

We are amused yet troubled by the stand taken by the state government with regard to the film which has received the National Award. We want to put the anguished question, what good is the protection of freedom of expression if the State does not take care to protect it? If the film is unobjectionable and cannot constitutionally be restricted under Article 19(2), freedom of expression cannot be suppressed on account of threat of demonstration and processions or threats of violence. That would tantamount to negation of the rule of law and a surrender to black mail and intimidation. It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed against the State.

The State cannot plead its inability to handle the hostile audience problem. It is its obligatory duty to prevent it and protect the freedom of expression. In this case, two… committees have approved the film. The members thereof come from different walks of life with variegated experiences. They represent the cross section of the community. They have judged the film in the light of the objectives of the Act and the guidelines provided for the purpose. We do not think that there is anything wrong or contrary to the Constitution in approving the film for public exhibition.

The producer or as a matter of fact any other person has a right to draw attention of the

government and people that the existing method of reservation in education institutions overlooks merits. He has a right to state that reservation could be made on the basis of economic backwardness to the benefit of all sections of community. Whether this view is right or wrong is another matter altogether and at any rate we are not concerned with its correctness or usefulness to the people. We are only concerned whether such a view could be advocated in a film. To say that one should not be permitted to advocate that view goes against the first principle of our democracy. We end here as we began on
this topic.

Freedom of expression, which is legitimate and constitutionally protected, cannot be held to ransom by an intolerant group of people. The fundamental freedom under Article 19(1)(a) can be reasonably restricted only for the purposes mentioned in Articles 19(2) and the restriction must be justified on the anvil of necessity and not the quirks and of convenience or expediency. Open criticism of government policies and operations is not a ground for restricting expression.

We must practise tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself…

END

Aadhaar Data is Never Breached or Leaked: UIDAI

The Unique Identification Authority of India (UIDAI) responding to a news report, appeared in certain section of media on "*210 Government sites made Aadhaar info public*" as if Aadhaar data is leaked or breached, has said that such report is a skewed presentation of the facts and poses as if the Aadhaar data is breached or leaked which is not the true presentation. UIDAI said in a statement here that the Aadhaar data is fully safe and secure and there has been no data leak or breach at UIDAI.

UIDAI said that this said data on these websites was placed in public domain as a measure of proactive disclosure under RTI Act by these government and institutional websites which included beneficiaries' name, address, bank account, and other details including Aadhaar number and was collected from the third party/users for various welfare schemes. It was this collected info which had been displayed in the public domain under RTI Act. There was no breach or leakage of Aadhaar data from UIDAI database or server as has been aired by the said report.

UIDAI said that acting promptly on this, UIDAI and Ministry of Electronics & IT had directed the concerned Government departments/ministries to immediately remove it from their websites and ensure that such violation do not occur in future. Certain other measures were also taken at various levels to ensure that such incidents of display of Aadhaar numbers do not take place. Following UIDAI's action such data were removed from these websites immediately. However, the news presented the facts in a skewed manner and misleads readers as if Aadhaar data has been leaked or breached at 210 websites posing Aadhaar security is vulnerable.

UIDAI reiterated that Aadhaar security systems are best of the international standards and Aadhaar data is fully secure. There has been no breach or leakage of Aadhaar data at UIDAI. Also, the Aadhaar numbers which were made public on the said websites do not pose any real threat to the people as biometric information is never shared and is fully secure with highest encryption at UIDAI and mere display of demographic information cannot be misused without biometrics.

UIDAI clarified that Aadhaar number is not a secret number. It is to be shared with authorized agencies when an Aadhaarholder wishes to avail a certain service or benefit of government welfare scheme/s or other services. But that does not mean that the proper use of Aadhaar number poses a security or financial threat. Also, mere availability of Aadhaar number will not be a security threat or will not lead to financial/other fraud, as for a successful authentication fingerprint or iris of individual is also required. Further all authentications happen in presence of personnel of respective service provider which further add to the security of the system.

Furthermore, UIDAI security system has people's participatory security system like Biometric Lock

facility available at UIDAI portal which any Aadhaarholder can use to put his/her own lock on one's biometric by visiting UIDAI's official website www.uidai.gov.in.

NNK/MD

END

No need for privacy in court, says SC

This was a follow-up to their March order to have CCTVs installed inside courtrooms and at vantage points within court complexes in at least two districts across States and Union Territories.

Dismissing apprehensions raised that such recordings would intrude into the privacy of judicial minds in action, Justice Goel responded, “There is no privacy in a court. We are sitting here for all.”

Appearing for the government, Additional Solicitor General Pinky Anand submitted that the government has “already taken steps” and the financial outlay of the project is under preparation.

Justice Goel said the government should “not prolong matters”. The court sought a report from Ms. Anand in two days’ time on the progress made so far.

The Bench had asked why the judiciary in India should be considered any different from the judges of other countries who do not consider recording of proceedings a violation of privacy of court proceedings.

The Bench has even mulled the possibility of recording tribunal proceedings.

The court has expanded the scope of a petition filed by Pradyuman Bisht for installing CCTV cameras in criminal courts as a measure to ensure fair trials.

On March 28, the Supreme Court had directed that in at least “two districts in every State/Union Territory (with the exception of small States/Union Territories where it may be considered to be difficult to do so by the concerned High Courts) CCTV cameras (without audio recording) may be installed inside the courts and at such important locations of the court complexes as may be considered appropriate”.

Not under RTI

“Monitor thereof may be in the chamber of the District and Session Judge concerned. Location of the district courts and any other issues concerning the subject may be decided by the respective High Courts. We make it clear that the footage of the CCTV camera will not be available under the RTI and will not be supplied to anyone without permission of the High Court concerned,” the Supreme Court had ordered.

The court had ordered that the installation of such cameras should be completed within three months. It said the Registrar Generals of the respective High Courts should hand over a status report to the Secretary General of the apex court a month after the installations are completed.

END

Govt. unveils law to regulate the sector

The draft of the country's first Space Law, unveiled on Tuesday, stipulates licences for all space-related players and activities. The draft also sets out penalties of Rs. 1 crore and above and jail terms for violations.

The proposed Space Activities Bill, 2017 that will go before Parliament, also seeks to keep the government out of any liability arising out of harm that these commercial activities may cause — to people, environment, other countries or outer space.

END

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So far, the national space agency Indian Space Research Organisation's major works have related to satellites, launchers and applications. These were governed by the Satellite Communication Policy, 2000; the Remote Sensing Data Policy, 2011; and international treaty obligations on outer space activities as mandated by the UN Committee on Peaceful Uses of Outer Space or UNCOPUOS.

New body proposed

The draft Bill defines objects, people and geography that will come under the future law. While all persons or entities engaged in space will now need a licence, the government will form a new authorised body for this purpose.

The Centre will keep a registry of all space objects.

The draft has been posted on the website of Indian Space Research Organisation (ISRO). Stakeholders have a month to send in their comments, according to a note signed by G. Ravi Shankar, Under Secretary in the Department of Space.

Explaining the need for a Space Law now, the notification says increasing applications of Space-based solutions have meant an increased participation of private sector industry and startups. "Commercial opportunities in space activities and services, nationally and internationally, demand a higher order of participation by private sector agencies. This situation demands a necessary legal environment for orderly performance and growth of space sector," it said.

A.S. Kiran Kumar, ISRO Chairman and Secretary, Department of Space, stated at an industry event in Delhi on Monday that the country needed to at least double the number of its 42 functional satellites in order to meet national demands. ISRO has started the process of selecting industry teams to quickly build spacecraft and launch vehicles for it in the next two to three years. It also launches many foreign spacecraft for a fee on the PSLV launcher.

Multiple players

According to a senior DoS official who requested not to be named, "Until now, ISRO being the only player never felt the need for a separate law. Now, many Indian and foreign companies are setting up shops here as well as 20-odd Indian startups. It is very important now that to have a regulatory mechanism and law to govern these activities."

The draft clearly defines space players, licences, violations, the official said, adding that detailed specific guidelines may come in later for each activity in consultation with stakeholders and industry bodies. The draft law is available at:

https://www.isro.gov.in/update/21-nov-2017/seeking-comments-draft-space-activities-bill-

2017-stake-holders-public-regarding

Tux brushing tussar, cards being exchanged like cocaine packets, billionaires mingled at Illuminating India

END

Parliament sessions are usually held thrice a year: once in February for the Budget Session, once around July or August for the Monsoon Session, and once in November for the Winter Session. This year, the government is yet to announce the dates for the Winter Session. While there has been uncertainty around whether Parliament will meet, ministers in the government have indicated that the Session will be held soon.[1]

The practice of allowing the government to convene Parliament differs from those followed in other countries. Some of these countries have a limited role for the government in summoning the legislature, because in a parliamentary democracy the executive is accountable to Parliament. Allowing the government to call the Parliament to meet could be in conflict with this principle. While we wait for the government to announce the dates for the Winter Session, this post looks at the relationship between Parliament and the government, recommendations made over the years on improving some parliamentary customs, and discusses certain practices followed by other countries.

What is the role of Parliament in a democracy?

The Constitution provides for the legislature to make laws, the government to implement laws, and the courts to interpret and enforce these laws. While the judiciary is independent from the other two branches, the government is formed with the support of a majority of members in the legislature. Therefore, the government is collectively responsible to Parliament for its actions. This implies that Parliament (i.e. Lok Sabha and Rajya Sabha) can hold the government accountable for its decisions, and scrutinise its functioning. This may be done using various methods including, during debates on Bills or issues on the floor of Parliament, by posing questions to ministers during Question Hour, and in parliamentary committees.

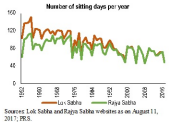
Who convenes Parliament?

Parliament must be convened by the President at least once in every six months. Since the President acts on the advice of the central government, the duration of the session is decided by the government.

Given the legislature's role in keeping the executive accountable for its actions, one argument is that the government should not have the power to convene Parliament. Instead, Parliament should convene itself, if a certain number of MPs agree, so that it can effectively exercise its oversight functions and address issues without delay. Some countries such as the United Kingdom and Australia release an annual calendar with the sitting dates at the beginning of the year.

How regularly has Parliament been meeting over the years?

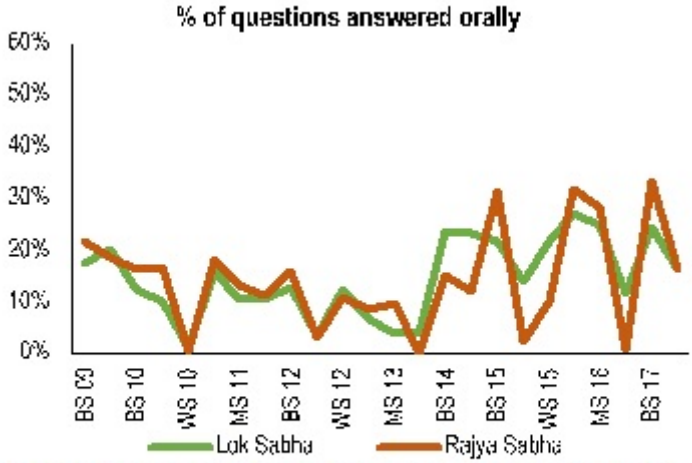
Over the years, there has been a decline in the sitting days of Parliament. While Lok Sabha met for an average of 130 days in a year during the 1950s, these sittings came down to 70 days in the 2000s. Lesser number of sittings indicates that Parliament was able to transact less business compared to previous years. To address this, the National Commission to Review the Working of the Constitution has recommended that Lok Sabha should have at least 120 sittings in a year, while Rajya Sabha should have 100 sittings.[2]



The Constituent Assembly, while drafting the Constitution had debated the power that should be given to Parliament with regard to convening itself. Mr. K. T. Shah, a member of the Assembly, had suggested that in case the President or the Prime Minister are unable or unwilling to call for a Parliament session, the power to convene the Houses should be given to the presiding officers of those Houses (i.e., the Chairman of Rajya Sabha and the Speaker of Lok Sabha). In addition, he had also suggested that Parliament should itself regulate its procedure, sittings and timings.[3]

How does Parliament hold the government accountable?

One of the forums of holding the government accountable for its actions is the Question Hour. During Question Hour, MPs may pose questions to ministers related to the implementation of laws and policies by the government.



Note: Oral questions listed in Rajya Sabha were decreased from 20 to 15 in winter session of 2014.
Sources: Lok Sabha and Rajya Sabha websites as on August 11, 2017; PRS.

In the 16th Lok Sabha, question hour has functioned in Lok Sabha for 77% of the scheduled time, while in Rajya Sabha it has functioned for 47%. A lower rate of functioning reflects time lost due to disruptions which reduces the number of questions that may be answered orally. While Parliament may sit for extra hours to transact other business, time lost during Question Hour is not made up. Consequently, this time lost indicates a lost opportunity to hold the government accountable for its actions.

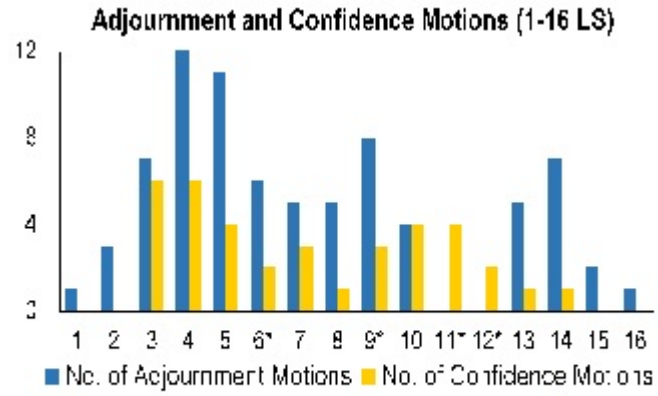
Further, there is no mechanism currently for answering questions which require inter-ministerial expertise or relate to broader government policy. Since the Prime Minister does not answer questions other than the ones pertaining to his ministries, such questions may either not get adequately addressed or remain unanswered. In countries such as the UK, the Prime Minister's Question Time is conducted on a weekly basis. During the 30 minutes the Prime Minister answers questions posed by various MPs. These questions relate to broader government policies, engagements, and issues affecting the country.[4]

How is public opinion reflected in Parliament?

MPs may raise issues of public importance in Parliament, and examine the government's response to problems being faced by citizens through: (i) a debate, which entails a reply by the concerned minister, or (ii) a motion which entails a vote. The time allocated for discussing some of these debates or Bills is determined by the Business Advisory Committee of the House, consisting of members from both the ruling and opposition parties.

Using these methods, MPs may discuss important matters, policies, and topical issues. The concerned minister while replying to the debate may make assurances to the House regarding

steps that will be taken to address the situation. As of August 2017, 50% of the assurances made in the 16th Lok Sabha have been implemented.[5]



Note: (i) * Lok Sabha did not complete full term, (ii) 16th Lok Sabha data as on August 11, 2017.
Sources: Lok Sabha and Rajya Sabha websites; PRS.

Alternatively, MPs may move a motion for: (i) discussing important issues (such as inflation, drought, and corruption), (ii) adjournment of business in a House in order to express displeasure over a government policy, or (iii) expressing no confidence in the government leading to its resignation. The 16th Lok Sabha has only discussed one adjournment motion so far.

To improve government accountability in Parliament, the opposition in some countries such as the UK, Canada, and Australia forms a shadow cabinet.[6],[7] Under such a system, opposition MPs track a certain portfolio, scrutinise its performance and suggest alternate programs. This allows for detailed tracking and scrutiny of ministries, and assists MPs in making constructive suggestions. Some of these countries also provide for days when the opposition parties decide the agenda for Parliament.

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[1] Sonia Gandhi accuses of Modi govt 'sabotaging' Parliament Winter session, Arun Jaitley rejects charge', The Indian Express, November 20, 2017, http://indianexpress.com/article/india/jaitley-refutes-sonia-gandhis-charge-of-sabotaging-parliament-session-says-congress-too-had-delayed-sitting-4946482/; 'Congress also rescheduled Parliament sessions: Arun Jaitley hits back at Sonia Gandhi', The Times of India, November 20, 2017, https://timesofindia.indiatimes.com/india/congress-also-rescheduled-parliament-sessions-arun-jaitley-hits-back-at-sonia-gandhi/articleshow/61726787.cms.

[2] Parliament and State Legislatures, Chapter 5, National Commission to Review the Working of the Constitution, March 31, 2002, http://lawmin.nic.in/ncrwc/finalreport/v1ch5.htm.

[3] Constituent Assembly Debates, May 18, 1949.

[4] Prime Minister's Question Time, Parliament of the United Kingdom, http://www.parliament.uk/about/how/business/questions/.

[5] Lok Sabha and Session Wise Report of Assurances in Lok Sabha, Ministry of Parliamentary Affairs, http://www.mpa.gov.in/mpa/print_summary_lses_ls.aspx.

[6] Her Majesty's Official Opposition, Parliament of the United Kingdom, http://www.parliament.uk/mps-lords-and-offices/government-and-opposition1/opposition-holding/.

[7] Current Shadow Ministry List, Parliament of Australia,

http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Parliamentary_Handbook/Shadow.

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END

Gujjars for categorisation of OBC quota

Laying siege:Gujjar agitators sit on railway tracks to block trains near Bharatpur in Rajasthan.File photo: PTI

With the Supreme Court reiterating the 50% ceiling set on reservation in jobs and education and effectively freezing the Rajasthan government's bid to provide quota to Gujjars through a Bill passed in the State Assembly, the community here has demanded categorisation of the Other Backward Class reservation.

A Cabinet subcommittee, tasked with interacting with Gujjars to find a solution to the quota issue, has found the demand difficult to fulfil and suggested that the community be recognised as “most backward” and given 1% reservation for which there is still room. The subcommittee's members are Social Justice Minister Arun Chaturvedi and Parliamentary Affairs Minister Rajendra Rathore.

A Bill passed in the Assembly on October 26 had created the “most backward” category within the OBCs for Gujjars and four other nomadic communities and given 5% reservation to them, increasing the OBC quota from 21% to 26% and taking the overall quota in the State to 54%.

“Only solution”

Gujjar Aarakshan Sangharsh Samiti general secretary Shailendra Singh, who was among the Gujjar leaders who met the subcommittee members here on Wednesday, said categorisation of OBC quota was the “only solution” available with regard to the issue.

Mr. Singh said while the advanced communities within the OBC category were mostly getting the reservation benefits, the “more backward” among the OBCs were lagging behind. He suggested that the State OBC Commission take up the task of quota categorisation on the lines of the mandate of the Justice G. Rohini Commission appointed by the Centre last month to examine OBC sub-categorisation in order to achieve greater social justice.

SC leash

The Supreme Court had last week restrained the Rajasthan government from taking any action or decision on the administrative side or in any manner conferring the benefit of reservation which will have the result of crossing the total reservation beyond 50%. The State government was asked to maintain status quo till the High Court finally decides a pending case against the impugned Bill.

The High Court had also on November 9 restrained the State government from implementing the provisions of the Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointment and Posts in Services under the State) Bill, 2017, passed in the Assembly.

Earlier attempts

Gujjars and others were earlier grouped as a special backward class and the State government had tried thrice to grant 5% reservation to them. However, the legislation was struck down every time by the High Court, which ruled that the quota had not only exceeded the 50% limit, but was also not supported by the quantifiable data supporting the claim of Gujjars’ backwardness.

The State government has maintained that as per the Supreme Court's ruling in the *Indra Sawhney* case, special circumstances exist in Rajasthan for giving reservation to OBCs beyond the 50% ceiling. The State OBC Commission has recommended giving quota to the communities

classified as OBCs, which comprise 52% of the State's population.

END

Time to change the House rules

The dates for the winter session of Parliament for this year have not been announced yet. In the last few years, the session usually started in the third or fourth week of November and closed just before Christmas. In 2013, the last winter session of the previous Lok Sabha started in the first week of December, was adjourned after 10 sittings, and continued in early February. Given the notice period of two weeks to summon a session, it is unlikely that we will see the commencement of the session before the second week of December.

Fewer, shorter

In the past, sessions have been shortened or even ‘merged’. The year 2008 presents an interesting glimpse into this process. A special two-day session was summoned in July for a confidence vote, after the Left parties support to the UPA coalition government. The government won the vote narrowly. This session was termed the monsoon session and the regular sessions held in October and December were termed as a continuation of the same session in different parts. The reason is that the government wanted to take advantage of one of the rules of procedure which stipulates that a motion cannot be proposed twice within the same session. This enabled the government to avoid having to prove its numbers again.

This brings us to the question of the key roles of Parliament. The lawmaking and financial functions of Parliament are primarily to examine and endorse government proposals. (Though the Constitution permits any member to propose a bill, private member bills are rarely enacted.) Parliament also has the important role of holding the government to account for its actions.

Defending the parliamentary system versus the presidential system, B.R. Ambedkar argued that all such systems attempted a balance between stability and responsibility. Both systems provide a periodic assessment by the electorate through elections. However, the parliamentary system provides a higher level of responsibility on the government through daily assessment by members in the form of questions, resolutions, no-confidence motions, adjournment motions and debates on addresses. He felt that daily assessment was more effective in holding governments to account, and more appropriate for India.

This argument presupposes frequent sittings of Parliament. In the initial years of our Republic, Lok Sabha sat for about 125-140 days a year. The size of the country and poor connectivity meant that MPs could not make a quick dash to their constituencies and there were planned intersession gaps to enable them to split their time between Delhi and their constituencies. Though it is far easier to travel today, Parliament has met for just 65-75 days per year in the last couple of decades. A direct consequence has been less scrutiny of the government’s actions, and even that of bills and budgets. A clear requirement for a more effective Parliament would be more sitting dates and a clear plan of those dates.

The Constitution specifies that Parliament will be summoned by the President; the President shall act on the aid and advice of the Council of Ministers; and there cannot be more than six months between two sittings of Parliament. Similar provisions exist for State legislatures. Thus, it is effectively the Prime Minister (or the Chief Minister) who determines when Parliament (or an Assembly) will meet, subject to the gap being less than six months.

One can see where this could go. Indeed, in several States the situation is dire. Data for 20 Assemblies over the last five years indicate that they meet for 29 days a year on average. States such as Haryana (12 days a year) and Uttarakhand (13 days) rarely meet. There have also been some extreme cases in terms of session time. On September 25, 2015, the Puducherry Assembly

commenced a session at 9.30 a.m. and closed at 9.38 a.m., which included a two-minute silence for obituary references, just short of the record of the shortest session by the same Assembly in October 1986, five minutes. Even a large State such as Uttar Pradesh has held a 10-minute session, in November 2011, in which the resolution to divide the State into four parts was passed.

Is there a way out?

One has to address the structural issue of the government deciding when to summon the legislature, and its ability to adjust the dates in response to emerging circumstances. That is, dilute the power of the government to be the sole decider of session dates.

A simple solution is to have a calendar of sittings announced at the beginning of each year. This would help members and others plan better for the whole year. Just imagine the trouble members currently face in scheduling other engagements in the absence of any certainty of the parliamentary schedule. One also needs to build in the possibility of additional sittings that the government can require if it needs urgent parliamentary approval for action under unforeseen situations.

A variant, such as that followed by the British Parliament, is to have year-long sessions. Thus, the five-year term of Parliament consists of five sessions of a year each. This would require some minor changes in rules such as permitting no-confidence motions to be taken up multiple times in a session if a significant minority asks for it.

A different approach would be to allow a significant minority of members to call for a session. Pakistan's Constitution requires a session of Parliament within 14 days if one-fourth of its membership demands one. It also states that Parliament should meet at least 130 days every year and there should be at least three sessions.

The legitimacy of the government in a democracy is derived from constant scrutiny by elected representatives. Perhaps it is time to tweak the rules of the game to strengthen the system and ensure that key institutions such as Parliament and State legislatures are able to perform their roles more effectively.

M.R. Madhavan is the President and co-founder of PRS Legislative Research

The definition of harassment needs to be constantly updated, and the process for justice made more robust

END

Yield determinants of state development loans

It is a common parlance that yield on state development loans (SDLs) trade at a premium to G-sec yields. This difference in yield attracts a lot of debate across research analysts and market participants and the common refrain is that such a yield differential could possibly be attributed to the fiscal marksmanship of individual states. We however believe otherwise and our results show such spread is a by-product of typical market idiosyncrasies/microstructure.

The importance of market microstructure (trading mechanisms, price formation, depth and liquidity) in various segments of financial markets and its implications for policymaking has been a much less explored area in the Indian context (apart from a 2009 paper *Money Market Microstructure And Monetary Policy: The Indian Experience* by Michael Patra and others).

For an economy that is currently undergoing deep-seated structural reforms, the interaction between monetary policy and the money market is an essential ingredient for understanding the market dynamics as well as for ensuring financial stability.

Interestingly, for the emerging and developed economies, the central position of the money market microstructure in the conduct of monetary policy has started drawing attention since 2000. It was found out that the monetary transmission mechanism in these countries was affected by the lack of depth in financial markets (*The Exchange Rate And The Term Structure Of Interest Rates In Mexico*, by Ogaki Masao, and Julio A. Santaellz).

Coming back to state governments, there is little literature available on the determinants of borrowing cost of SDLs with reference to India. The available literature on the subject shows that the spreads on the bonds of sub-national (state) governments are influenced by factors such as fiscal performance and market liquidity. On the other hand, empirical literature on cross-country experience reveals that there is mixed view on determinants of yield at sub-national level. Some studies suggest that the spread is determined by deficit and debt position of sub-national governments whereas other studies have highlighted factors specific to market microstructure like tradeability of securities, size of bond issuances, bond-issuing strategies being the key determinant of such yield spread.

In India, the yields on SDLs varies among states but largely remain above the G-secs yield (average yield differential of around 56 basis points during 2011-2017). The market perception is that fiscal situation of the state, say fiscal deficit, debt to state gross domestic product (GSDP) ratio are the major determinants of such yield spreads. In order to examine the relative importance of fiscal indicators and market-related variables in determining the yield spread, we made an empirical analysis using the panel data framework of the 15 states (contributing more than 95% of total SDLs) for the period FY12 to FY17.

For our empirical analysis, we estimated a panel regression model by using state-wise weighted average yield of SDLs as dependent variable and fiscal deficit, debt-to-GSDP ratio, average size of borrowing, number of times borrowed in a year, state’s share in total borrowing and GSDP growth as independent variables.

The state-wise data on SDLs borrowing indicate that the bigger states like Maharashtra, Tamil Nadu, Uttar Pradesh, Gujarat, West Bengal, Andhra Pradesh and Karnataka borrow more than 60% of the market borrowings through SDLs. North-Eastern states borrow the least, perhaps because of more Central assistance. Karnataka, Bihar, Uttarakhand and Jharkhand are the states whose market borrowing has increased rapidly over the years.

In FY12, the total amount of SDLs borrowed from the market was Rs1.6 trillion that increased rapidly to Rs3.6 trillion in FY17 with a compound annual growth rate of 18.2%. The weighted average yield of all the states has declined to 7.19% in July 2017 (9.17% in FY14).

Interestingly, states like Jammu and Kashmir, Uttar Pradesh, West Bengal, Punjab and Madhya Pradesh have borrowed at higher rates while states like Uttarkhand, Chhattisgarh and Haryana have raised resources at a lower rate.

Our results suggest that the conventional wisdom of the market that fiscal deficit of states, overall debt/GSDP ratio, GSDP growth will mostly explain such yield differential is incorrect. In contrast, most of our market variables related to market microstructure turn out to be statistically significant. For example, the average size of bond issuance of states reveals a negative and statistically significant influence over yield spreads. The same also hold good for both market share and number of bids in a year. Both the coefficients have a negative and significant impact on yield. The result also shows that states that are frequently borrowing from the market with higher ticket size are attracting better yield than those states that are taking less recourse to SDLs.

Additionally, to see the impact of farm-loan waiver on yields, we looked at states like Maharashtra, Punjab, Uttar Pradesh and Karnataka, which have recently waived farm loans. Interestingly, the data indicate that farm-loan waiver has no impact on the yield of these states, as should have been the case. In FY18 till October, Maharashtra, Uttar Pradesh are borrowing at a low yield rate than the median range of 7.37% of all the states. Similarly, Karnataka and Punjab have borrowed close to the median yield rate.

To sum up, apart from market microstructure, we would make three clear suggestions to enable a robust price-discovery mechanism for yields on SDL. These are: (1) Issue SDLs in buckets that have mutual exclusivity with G-secs for active market participation (2) reissue of SDLs for better consolidation, and (3) allow SDLs to be used as a collateral for collateralized borrowing and lending obligation for better price discovery.

Soumya Kanti Ghosh, Debashis Padhi and Tapas Parida are, respectively, group chief economic adviser and economists at the State Bank of India. These are their personal views.

END

A silver lining for peace and progress in Kashmir

In the most visible sign of tensions reducing in Kashmir, the government of India is planning to announce an amnesty scheme for stone-pelters in the Valley, and even withdraw cases against first-time offenders, Hindustan Times reported on Tuesday. This would not be the first time amnesty is being offered, however it appears that this time it is possible to move ahead with the peace process.

Conditions in the Valley have changed dramatically since July 2016 when tension because of stone-pelting reached its peak following the killing of Hizbul militant Burhan Wani. Hundreds were killed during the ensuing protests, and if today there is a silver lining visible it is because of the sustained efforts of both state and central governments. The latest in this string of positive developments is the appointment of Dineshwar Sharma, a former intelligence chief, as the interlocutor between the State and various representatives from Jammu & Kashmir.

Last year 88 locals took to militancy, and it is important for the government to arrest this trend. This cannot be done through brute force. The focus on reaching out, especially to the youth in the Valley, is the right approach because winning their trust and building their confidence in the State is what will help in the long run. Sharma has said that his focus will be on the youth and on "…how to change their mindset because they are the ones who are angry", the HT report quoted.

The J&K police's decision to not register a case against Majid Khan, a militant who surrendered following an emotional appeal from his mother, is reflective of the hope the State has in its efforts to reach out to the youth. Following Khan's return, two other mothers have also appealed to their sons to return.

Helplines like Madadgaar (Dial 1441), where families and well-wishers of youth who want to surrender can call, is another positive initiative.

These positive developments come at a time when support for terrorists in the Valley is on the wane. Still security forces are on vigil as infiltration bids and ceasefire violations as recently as on November 17 at the Poonch sector. As winter sets in, cross-border terrorism and militancy is expected, which is also works in the government's favour. All in all, this is a golden opportunity to put an end to the cycle of unrest in the Valley, and usher in progress and development.

END

More seats proposed for Sikkim Assembly

Sikkim Chief Minister Pawan Kumar Chamling wrote to the Centre that the State is governed under special constitutional provision Article 371 (F), which distinguishes it from other States and Article 170 of the Constitution (under which the Delimitation Commission came into force) does not apply to it.

The Law Ministry also said that the final order made by the Delimitation Commission could not have been challenged by any court but the special constitutional provision to Sikkim allows them to make the changes. Mr. Chamling also said, “The existing specific reservation of 12 seats for Bhutia and Lepcha communities, and one seat for Sangha constituency, which are given to them on the basis of being ST should not be disturbed or tinkered with.”

A resolution passed by the Sikkim Assembly in 2009 had generated apprehension in the minds of the indigenous Bhutia-Lepchas and the expansion of the Assembly could dilute their political rights until there was a “proportionate increase” of seats.

As a way out, Mr. Chamling suggested that the entire Assembly be designated as “Scheduled Tribes.” The Ministry of Tribal Affairs opposed the move as the remaining communities like Thami, Chhetri, Sanyasi, Newar, Kirt Khambu Rai, Kirat Dewan, Sunuwar, Gurung, Mangar and Bhujel did not fulfil the criteria.

“There will be amendments to the Second Schedule of the RP Act, 1950, whereby total seats in the Sikkim Legislative Assembly will be 40 in place of the existing 32, reserving five seats for Limboo and Tamang, while retaining the existing reservation for Bhutias, Lepchas, Scheduled Castes and Sanghas,” a proposal of the Home Ministry said.

END

Polls apart

With the Election Commission of India (ECI) having indicated that it is ready to execute simultaneous elections, the issue has gathered momentum. While it would actually take a lot of time, the “preparations” by the ECI suggest that the powers-that-be might not be willing to consider the larger implications, nor wait for a consensus to evolve, nor bother with constitutional proprieties. The issue is made out to be about homogenisation — a pet theme of the current dispensation — and hence it is being packaged as “One Nation One Poll”. Nothing can be farther from the spirit of the Constitution or, for that matter, from democratic principles.

NITI Aayog has prepared a “discussion paper” justifying a far-reaching revision of the Constitution. It summarises key arguments in favour of simultaneous elections and also proposes a plan to implement and institutionalise them. Discussions on this issue have so far mainly focused on the likely effect of this measure on election outcomes and the practical aspects of conducting elections simultaneously. Just as the “why” of simultaneous election is problematic, the “how” of this measure, too, requires more detailed discussion and debate.

The discussion of electoral reforms in the Indian context often deflects from the main issues and tends to bring solutions that might be both irrelevant and more harmful than the pre-existing challenges. The move for simultaneous elections is yet another instance of this tendency. Among other justifications, the proponents have argued that it is necessary because of “governance” issues — the imposition of the model code of conduct and because of the influx of money into politics. It is evident that both these issues need to be addressed by the political establishment through serious debate, introspection and self-regulation. Instead, all the blame is laid at the door “continuous elections” in different parts of the country, round the year.

Perhaps the least debated but most worrying part about the proposal for simultaneous elections is the actual mechanism to ensure its “workability”. Elections to Lok Sabha and state assemblies become staggered because of a core principle of the parliamentary form of government: The legislature shall be accountable to elected representatives. Supporters of the measure often point to simultaneous elections until 1967. But it is often forgotten that those simultaneous elections were not constitutionally mandated; they occurred simultaneously only because historically, electoral competition with adult suffrage formally took off at the same time at the national and state level and for the first two decades, electoral mandates for national and state legislatures ordinarily remained stable (barring in Kerala). In other words, simultaneous elections were not a principle but a function of historical coincidence and initial political stability. The overarching principle of legislative majority remained sacrosanct.

If we now decide to artificially and forcibly implement simultaneous elections as a principle rather than as an incidental outcome of the political process, we must ensure a certain hierarchy of principles. Supporters of simultaneous elections, however, are so excited that they are even prepared to sacrifice the higher and constitutionally mandated principles of the parliamentary system. These are the twin principles of accountability to the legislature and the five-year term. If a legislature throws out a government and is unable to form another, then elections become inevitable. On the other hand, a legislature has a five-year term once elected — if it can throw up an executive with legislative majority.

This is where the proposed mechanism falters. In the first place, it brings to the table the proposition earlier made by L.K. Advani involving the “confidence vote”. This means that a no-confidence vote becomes infructuous in the absence of a confidence vote accompanying it. This looks attractive to those who posit less value in popular mandates and more in stability. But whether this proposal passes the test of a parliamentary system or not remains a question. The

implication of such a provision would be that a government cannot be removed, however anti-people or under-performing it may be, or in spite of being hopelessly in a minority, if the Opposition is not united enough on an alternative to replace the existing ministry. In either case, will this not violate the basic features of the parliamentary system? By this logic, the improbable governments of Charan Singh (1979) or Chandra Shekhar (1990) could not have been removed, nor could no-confidence in the United Front government (1998) or the Vajpayee government (1999) be articulated by the then parliaments.

Two, another mechanism that is proposed is even more problematic. As the NITI Aayog mentions, if the mechanism of confidence vote fails and the Lok Sabha is to be prematurely dissolved, then, instead of fresh elections, if the period is short, the president can carry on the administration with advice from a council of ministers (which obviously does not have the support of the legislature). This would be the most blatant violation of the principle of responsible government and such a proposal is nothing short of rewriting the Constitution via a back door and bringing in of the provision of "president's rule" at the national level. It would also accord to the president an unreasonably wide discretion of appointing such an interim, non-responsible government.

Three, if the legislature is to be inevitably dissolved with a larger portion of the five-year term still remaining, then it is suggested that fresh elections are held but the legislature shall not have the full five-year term; instead, it would have a truncated term that remained from the previous legislature's term. This would jeopardise the constitutional protection that a legislature, once elected, gets a five-year term.

Thus, three key mechanisms are in danger of arbitrary and unnecessary revision: Removing a government by the no-confidence measure, the mechanism that the president shall appoint as prime minister only a leader with a majority in the Lok Sabha and the five-year term of elected legislatures. All these changes would require both a constitutional amendment and judicial approval that they do not violate the "basic structure" of the Constitution. But primarily, they would require a rewriting of it on a scale and scope larger than that of the infamous 42nd Amendment.

It can be argued that constitutions do require massive changes. So, one need not go into the question of rigidity or inability to make suitable changes. The key question here is whether this effort and violation of existing provisions and principles is really required. This takes us back to the purpose behind pursuing this change. If expenditure is an issue, that logic would finally take us to the argument that elections are expensive and hence problematic. If the interference of the model code of conduct is an issue, political parties need to impose self-regulation when in power and ensure that the boundaries between rightful and legitimate decision-making and wrongful advantage of positions of power to win votes are strictly and legally defined. If black (illegal) money is the problem, then it can hardly be addressed by this measure; changing both laws and practices involving electoral finance will be the best route to adopt.

While questions over how and why the ECI allowed itself to sideline these fundamental issues are moot, it is also necessary that we take with a fistful of salt the NITI Aayog's pious-sounding conclusion that simultaneous elections "would be a stepping stone towards… larger 'electoral reforms'.". We surely need to "re-boot Indian polity" but not at the cost of giving democracy the boot.

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The Hindu Explains: What is the Space Activities Bill, 2017?

The Space Activites Bill is up on the ISRO website, with an invitation for comments from stakeholders. | Photo Credit: PTI

A Bill pending before the Parliament is to encourage both the public and private sectors to participate in the space programme.

It is a proposed Bill to promote and regulate the space activities of India. The new Bill encourages the participation of non-governmental/private sector agencies in space activities in India under the guidance and authorisation of the government through the Department of Space.

According to the draft, as few start-up companies in India have shown interest in space systems activities and as space activities need participation from private sector agencies, “there is an urgent need for a legal environment for orderly performance and growth of space sector.”

The draft was posted on the website of Indian Space Research Organisation (ISRO) on November 21, 2017.

The Bill seeks comments on the draft from stakeholders and the public. ISRO has given a month’s time to read the 20-page draft and send comments.

Tux brushing tussar, cards being exchanged like cocaine packets, billionaires mingled at Illuminating India

END

No fresh polls if NOTA exceeds candidates' votes

Justice Dipak Misra

"Holding elections in our country costs money," Chief Justice of India Dipak Misra said, while rejecting a public interest litigation petition suggesting fresh elections whenever the public chose overwhelmingly the "None of the Above" (NOTA) option.

Supreme Court advocate Ashiwni Upadhyay said that if NOTA got the highest number of votes, it would amount to an expression of public dissatisfaction with the candidates in the fray.

If this happened, the result should have to be nullified by the Election Commission.

In response, a three-judge Bench, led by the Chief Justice, gave Mr. Upadhyay an illustration.

"Let us say the highest percentage of votes polled by a candidate is 40 and the rest goes to NOTA. Does this mean we subject this candidate to another election," Chief Justice Misra asked.

"So, this means there should be an election each time a candidate gets less than 51% of the votes polled ... We cannot say such things. We will not be doing our duty and will be crossing a constitutional barricade," the Chief Justice said.

The court said a voter had the right to express his dissent by staying at home.

Mr. Upadhyay has decided to withdraw his petition from the court. He may now approach the Election Commission.

His petition had even sought a ban on the parties and their candidates who failed to NOTA in the first election from contesting the fresh polls.

END

The mandates of natural justice

It was on November 26, 68 years ago, that the chairperson of the Constitution drafting committee, B.R. Ambedkar, put to vote the following motion at the Constituent Assembly: “That the Constitution as settled by the Assembly be passed.” The motion, as the minutes of the day’s meeting recorded, was adopted amidst “prolonged cheers.” In the ensuing decades, though, the day was scarcely recognised as forming an occasion of any particular note. But, in 1969, the Supreme Court Bar Association declared November 26 as Law Day, “a red-letter day,” in the words of the association’s then president, L.M. Singhvi, which the government has now designated as Constitution Day. But call the day what we might, Singhvi’s intention in declaring it as an occasion for annual observance is certainly worthy of paying heed to.

“Our purpose in designating 26th November as Law Day,” said Singhvi, in his inaugural address, “is to emphasise the role and importance of law in the life of our Republic, to review the state of law and administration of justice, to suggest ways and means of improving our laws and our legal and judicial system, to establish better and more meaningful equations between the Bench and the Bar, to strengthen the principle of the independence of the judiciary… and to maintain, reinforce and augment public confidence in our legal and judicial system.”

A necessary appraisal

Were we to today conduct an introspection of the kind that Singhvi thought necessary, what might our appraisal be? This question attains particular salience given recent events in the Supreme Court, which have not only sounded a national alarm, but have also threatened the confidence that the public might repose in the judiciary. The court’s collective actions, in undermining every notion of good ethical conduct, has struck a potentially irredeemable blow at the principles highlighted by Singhvi in his speech, each of which goes to the root of the constitutional morality that Ambedkar held so dear.

The firestorm in this case was triggered by a first information report in which a retired Orissa High Court judge, I.M. Quddusi, was implicated for allegedly taking bribes to secure favourable orders from the Supreme Court. As it happened, these matters which Justice Quddusi is alleged to have claimed he could fix were heard by a bench presided by the Chief Justice of India (CJI). These claims supposedly made by Justice Quddusi might well be humbug. But how are we to know their veracity unless a reasonable investigation is conducted? This precisely was the question that a pair of petitions filed respectively by the Campaign for Judicial Accountability and Reforms (CJAR) and the advocate Kamini Jaiswal raised. Given that any involvement of the Central Bureau of Investigation could impinge the autonomy of the judiciary, the petitions suggested that the court might consider appointing a special investigation team to conduct an inquiry into the FIR, under the supervision of a retired CJI, independent of all executive interference.

When the original petition was filed by the CJAR, it might have been reasonable to expect the CJI to recuse himself altogether from the matter, including from any involvement as the master of the roster, as the person responsible for both determining which judges hear a case and when they do so. But his failure to do so prompted the filing of a second petition, this time by Ms. Jaiswal. With a view to avoiding any intervention by the CJI, this case was separately mentioned before a bench presided by the court’s second most senior judge, Justice J. Chelameswar, who ordered that the petition be heard by a bench comprising the five most senior judges of the court. This, however, led to a series of other consequences, with the controversy spiralling into successive episodes of unseemliness, each apparently more damaging than the previous. Ultimately, the CJI not only set aside Justice Chelameswar’s order, by constituting a five-judge bench of his own, over which he himself presided, but he also thereby reaffirmed his power and authority to make administrative

choices.

Justice seen to be done?

If we were to view the controversy rationally, the entire issue ought to boil down to these questions: under what circumstances does a litigant's claim in court translate into a claim that interests a judge? Does the CJI ever have a duty to recuse himself as the "master of the roster"? To determine these questions, the court has no explicitly binding rules to apply; it's guided partly by precedent, but mostly by discretion. In ordinary circumstances, this discretion would be governed by the general principle expressed by Lord Chief Justice Hewart of the King's Bench nearly 100 years ago: that "justice should not only be done, but should manifestly and undoubtedly be seen to be done."

But, on November 14, when a three-judge bench constituted by the CJI, which included a judge who had originally heard the cases that Justice Quddusi claimed he could influence, conducted a hearing, it barely considered the basic tenets of this principle. Instead, it dismissed Ms. Jaiswal's petition, as an attempt at "bringing disrepute" to the court. What's more, the bench also held that the petitioner's request for a recusal by one of the judges hearing the case amounted virtually to a contempt of the court.

The Gajendragadkar way

Here, it may have been instructive for the court to hark back to an incident from August 1964, when a group of intervenors represented by the lawyer Purushottam Trikamdas — a 'tiger' at the bar, by Fali Nariman's reckoning — made what was at the time an odd request to a bench presided by the CJI, P.B. Gajendragadkar, which was hearing a case concerning the validity of a Bombay land acquisition law. Gajendragadkar, they argued, should not hear the case, since its outcome would affect a cooperative housing society of which he was a member.

As Mr. Nariman recounted in his memoir, "Before Memory Fades," Gajendragadkar eventually agreed to recuse himself from the case, but he nonetheless expressed an intention to hear a similar dispute that emanated from Madras, where he himself had no personal interest. It was then that the Attorney General, C.K. Daphtary, who was appearing for the Union of India, stood up to point out to the judge that it wouldn't be ethical for him to hear either of the cases, given that any decision in the Madras case would have likely bound the court later when it heard the challenge to the Bombay law.

The next day the bench was promptly reconstituted, with Justice K. Subba Rao presiding. As Mr. Nariman pointed out, there could be little doubt, not then, and not today, and certainly never in Daphtary's mind, that had Gajendragadkar heard the cases, Dapthary's client, the government, would have succeeded. But, as it happened, the two cases — *N.B. Jeejeebhoy v. Assistant Collector* and *Vajravelu Mudaliar v. Special Deputy Collector* — were both decided against the state. In H.M. Seervai's words, the Chief Justice, in recusing himself, had thus "affirmed in India the principle, well settled in England, that the requirements of natural justice apply to the most exalted judicial officer as they do the humblest."

Now, Gajendragadkar's recusal still leaves certain questions unanswered. In particular, it doesn't tell us much about the CJI's role as the master of the roster. But, were we to place the Chief Justice's position as an administrative head above ordinary mandates of natural justice, we would be violating the basic constitutional morality that holds together the entire structure of our Constitution, the idea that we are a country governed by the rule of law.

Suhrith Parthasarathy is an advocate practising at the Madras High Court

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Let’s talk filters

Facebook has announced it is building a tool that will allow its users to see if and what Russian propaganda they have followed, particularly during the 2015-2016 US presidential election campaign. The social media giant’s attempt to “protect people from bad actors who try to undermine our democracy” has come after it has been under fire, along with Google and Twitter, from US legislators who feel the tech platforms were used to plant “fake news” by foreign actors. In fact, since the election, debates over whether and how to regulate the social media space have been growing. It seems the usual answers — tinkering with the algorithms and saying that the echo chamber on the internet merely mirrors society — are not going to be enough.

Unlike print or even television media, the growth of the internet has far outpaced attempts at regulating it. The freedom and voice that social media platforms have afforded users will likely be curbed if governments begin to police the space more than is absolutely necessary. Section 66a of the IT Act, for example, was used by multiple governments in India to silence dissent. On the other hand, the risk that anonymously paid advertising can be used to spread propaganda and fix elections is tangible. The solution, perhaps, lies in following in the steps of traditional publishing outfits.

Facebook, Google and Twitter are, like most platforms and publishers, profit-making enterprises. Fundamentally, what they sell is readers, viewers or users to advertisers. Given that users’ data is the product, it is unsurprising that some people, and now even policy-makers, assume that concerns like privacy and veracity of content are not of primary concern to social media companies. To lay to rest those apprehensions, it is important that filters be implemented by the companies themselves. Facebook, for example, is now the largest publisher in the world. It must have editors, whether human or AI, so that no government has an excuse to interfere with the internet.

END

GCCS 2017 – Chair's Statement- Summary

1. Starting with the London Process in 2011 which initiated a broad dialogue on the opportunities and challenges in an increasingly networked world and to create a platform to address key themes in cyberspace, the delegates to the Fifth Global Conference on Cyberspace (GCCS) 2017, met in New Delhi from November 23-24, 2017 to promote an inclusive, sustainable, open, secure, stable and accessible cyberspace.

2. The Conference recognised that international community, including the governments, private sector, civil society, industry and technical and academic communities have developed significant capacities, technologies and mechanisms/frameworks to harness the vast potential of ICTs for development. The Conference agreed that the focus needs to be on looking beyond digitisation to digital technology as means to empower people.

3. We noted with concern that the existing digital divide among the countries presents a challenge to many States. Therefore, we cannot have a situation where access to internet is discriminatory or controlled through selective gateways. The conference strongly supports this concept as reflected in its theme of cyber4all.

4. In particular the conference noted with satisfaction India's Digital Initiative of transformation and empowerment of the people through programmes like Digital India, Skill India, Start-up India, Stand-up India that are empowering common people as well as our Mass digital movements like Common Service Centres in the rural areas that are promoting entrepreneurship and and promoting digital inclusion.

5. The conference noted that women form a significant part of the IT workforce. Digital technology has facilitated several new enterprises led by women. In this way the IT sector has potential for gender empowerment.

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Cyber 4 Growth:

6. The conference highlighted the use of new technologies has a major potential for transformation of governance structures of the future. Artificial Intelligence, IoT, data analytics, robotics and virtual reality are transforming global business and economies. We appreciate the need to develop

proper policy environment with open and free cyber space.

7. We noted with satisfaction that Governments around the world are leveraging digital platforms, and building digital infrastructure, to transform how they deliver public services and support to citizens, enabling participative, bottom-up citizen engagement and anytime/anywhere service delivery within disadvantaged communities.

8. Cyberspace remains a key area for innovation. Startups, are providing solutions to common everyday problems. The global investor community must recognize the immense potential waiting to be tapped. The global economy is becoming increasingly dependent on cyberspace and digital technology. It is important to give primacy to human face of technology in this context.

Cyber 4Digital Inclusion

9. The conference stressed the fact that Inclusiveness is the bedrock of sustainability. This calls for a program based approach with focus on access programs, digital skill training, community technology spaces and low cost access devices. India's myGov initiative is an example of how digital technologies could be tools of effective citizen engagement.

Cyber4Security

10. Securing the cyberspace has become one of the biggest challenges in the present day. Nations must take responsibility to ensure that the digital space does not become a playground for the dark forces of terrorism and radicalization.

11. We recognize that we must coordinate our security services in order to detect and deter attacks. We need to create the fine balance between privacy and openness on one hand, and national security on the other. Together, we can overcome the differences between global and open systems on one hand, and nation-specific legal requirements on the other.

Cyber 4Diplomacy

12. The extensive use of cyber space by states to carry out its legitimate activities including service delivery of its citizens, has thrown up new challenges in terms of establishing norms of responsible state behaviour, handling cyber-crime through trans- national cooperation and resolving conflicts in cyberspace. Cyber diplomacy in digital age can be used as a tool to promote economic growth, development of technology to ensure an open source, interoperable and accessible cyber space

to all.

Conclusion & Way Forward

13. Cyberspace is a public resource, improving the quality of life of individuals, improving the reach and productivity of business and effectiveness of governments. Technology breaks barriers.

14. India emphasizes the need for creation of a digital platform which would enable various stakeholders to address potential information and communication technology gaps and harness information and communication technology for sustainable development. There is particularly the need for finding scalable models and innovative solutions in education and health, using digital technology. There is also the need to make cyberspace an enabler for the differently-abled.

15. To facilitate this India will enable a Digital Knowledge Sharing Platform which will help in sharing of knowledge and expertise between different countries

16. The large multi-stakeholder participation at this event is proof of the global endorsement that this platform has received. India calls upon Nation states, the industry, academia and civil society, to work towards a formal collaborative framework. This will enable a secure cyberspace which improves quality of life.

NNK/MD

END

Union Home Minister chairs 12th meeting of Standing Committee of Inter-State Council

Shri Rajnath Singh says Harmonious Relations with States a priority of the Central Government

The Union Home Minister Shri Rajnath Singh chaired the 12th meeting of the Standing Committee of Inter-State Council (ISC), here today.

Addressing the meeting, Shri Rajnath Singh said that a number of steps have been taken in recent years by the Central Government to promote cooperative federalism. He said that the meeting of the Inter State Council, which was held in July, 2016, happened after a gap of 10 years. Subsequent to that, meetings of the Standing Committee of the Inter-State Council are being periodically convened to lend speed and purpose to the process of harmonizing Center State relations, he said. He expressed satisfaction over the fact that the meetings of the Zonal Councils have now become regular and periodical. He also said that our effort is to see that at least one meeting of all the Zonal Councils is convened annually. He mentioned that a number of important State-to-State and Centre-State issues that are raised at these meetings find resolution. In 2015 such 82 issues were resolved and 140 issues were resolved in 2016.

Shri Rajnath Singh expressed satisfaction over the fact that the Inter State Council and the Standing Committee have been rejuvenated. He said that it is important for us to promote the spirit of cooperation with greater zest and zeal and expressed satisfaction over the deliberations held today in harmonious and congenial atmosphere for arriving at consensus on some complex issues that have been covered in the agenda notes.

The Home Minister said that Volumes-I & II were discussed during the eleventh meeting of the Standing Committee in April this year and Volumes-VI and VII will be discussed during the next meeting of the Standing Committee. Shri Rajnath Singh said that the recommendations of the Standing Committee on Punchhi Commission’s report will then be placed before the Inter-State Council, headed by the Prime Minister.

The subjects discussed at the meeting included : Matters related to financial transfers from the Centre to the States; Goods and Services Tax; Structure and devolution of functions to local bodies; District Planning; Special provisions for Fifth and Sixth Scheduled Areas; Maintenance of communal harmony; Deployment of Central Forces; Migration issues; Police reforms; Criminal justice system and other internal security issues. The Standing Committee at its meeting considered 118 recommendations contained in Volumes-III, IV and V and finalised its recommendations.

The Punchhi Commission was set up by the Government under the chairmanship of Justice (Retd.) Madan Mohan Punchhi, former Chief Justice of Supreme Court of India in 2005. The Punchhi Commission submitted its report in 2010 containing 273 recommendations in 7 volumes. The 11th meeting of the Standing Committee of ISC was held on 9th April this year after a gap of 11 years and 69 recommendations of the

Punchhi Commission relating to the Constitutional provisions on various subjects such as the role of Governors, the Inter-State Council, assent to bills passed by Legislative Assemblies etc. were discussed. The convening of the Standing Committee meetings twice in the same year reflects the importance attached to the promotion of harmonious Centre-State relations.

The meeting of the Committee was attended by the Union Ministers of Finance and Corporate Affairs Shri Arun Jaitley; Social Justice and Empowerment Shri Thaawar Chand Gehlot, the Chief Minister (CM) of Chhattisgarh Dr Raman Singh, CM Odisha Shri Naveen Patnaik, CM Rajasthan Smt Vasundhara Raje Scindia and CM Tripura Shri Manik Sarkar as members. Shri Ravi Shankar Prasad, Union Minister for law and Justice, Shri Hardeep S Puri, Union Minister of State for Housing and Urban Development were present as special invitees. States of Uttar Pradesh, Punjab and Andhra Pradesh were represented by their ministers.

Representatives of 30 Union Ministries/Departments and 7 State Governments were also present to assist the Committee in its deliberations.

KSD/SB/NK/PK

END

Address by the Hon'ble President of India Shri Ram nath Kovind On the Occasion of Inauguration of Constitution day Celebrations

Address by the Hon'ble President of India Shri Ram nath Kovind On the Occasion of Inauguration of Constitution day Celebrations

1. I am happy to be here this morning on the occasion of Constitution Day, which marks the anniversary of the adoption of our Constitution on November 26, 1949. This is a moment to recall the men and women of the Constituent Assembly who completed the monumental task of drafting a Constitution for independent India. They produced a fine document, handwritten in 90,000 words, which continues to be our guiding light.

2. A key role in this exercise was played by Babasaheb Dr Bhim Rao Ambedkar, the chair of the Drafting Committee, who was awarded the Bharat Ratna in 1990. In 2015, in honour of Dr Ambedkar's 125th birth anniversary, the Government of India began to observe November 26 as Constitution Day.

3. Since 1979, the Supreme Court has observed this day as National Law Day. From 2016, it decided to celebrate it with a **Constitution Day Lecture** to be delivered each year by an eminent jurist. The first such lecture was delivered by Mr Justice M.N. Venkatachaliah. Today, we had the opportunity to hear Mr Justice R. C. Lahoti, former Chief Justice of India. I am also glad to have received the first copies of two books – ***The Constitution at 67*** and ***Indian Judiciary: Annual Report 2016-17***. I compliment the Supreme Court for publishing them.

Ladies and Gentlemen

4. Perhaps the most remarkable feature about our Constitution is that its philosophy is everlasting – but its structure and clauses are flexible. Our Constitution framers were enlightened and far-sighted enough to give future generations the power to amend and change clauses as may be needed with the times.

5. Our Constitution is not static but is a living document. The Constituent Assembly was conscious that the Constitution would need to be interwoven with new threads. In a dynamic world, this would be the best way to serve the people and the nation as a whole. As such, over the years, many amendments have been carried out to the Constitution by Parliament.

6. The Constituent Assembly comprised men and women of unparalleled vision. They sought to draft a Constitution that was defined by a noble and expansive philosophy – rather than being a rigid document. The members of the Constituent Assembly ensured that there are checks and balances in the democratic system with appropriate roles for the executive, the legislature and the judiciary. This allows them to function independently but with accountability.

7. As for the citizens of our country, in whom sovereignty is ultimately vested, the Constituent Assembly was of the firm belief that they have a claim to Fundamental and Constitutional Rights. And yet they also have obligations towards the nation and society, including but not limited to Fundamental Duties.

8. At the heart of the constitutional project was **trust** – **trust** in each other, **trust** between institutions, **trust** in the goodness of fellow citizens, and **trust** in the wisdom of future generations.

9. This sense of **trust** is inherent in constitutional governance. When the Government **trusts** citizens to attest their documents themselves, it is in keeping with the spirit of the Constitution. When the Union government **trusts** state governments by devolving financial powers to them, and taking ahead the mission of **cooperative federalism**, then too we are working in the spirit of the Constitution.

10. Our Constitution framers realised that a Constitution, no matter how well written and how detailed, would have little meaning without the right people to implement it and to live by its values. And in this, they placed their faith in generations that would follow.

11. As Dr Ambedkar told the Assembly in his concluding speech on November 25, 1949, “However good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good, if those who are called to work it, happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution.”

12. The Constitution empowers the people as much as the people empower the Constitution. When individuals and institutions ask what the Constitution has done for them and how it has built their capacities – they must also consider what they have done to uphold the Constitution. And what they have done to support its value system. The Constitution strengthens us, but we too strengthen the Constitution with our actions every day. To borrow the opening words of the Preamble, it could be said that the Constitution is ‘We, the People’ as much as ‘We, the People’ are the Constitution.

13. Our Constitution builds a superstructure of political, economic and social democracy. This superstructure rests on three principles or pillars: **liberty**, **equality** and **fraternity**. Dr Ambedkar had cautioned that these principles are not to be treated as separate and unrelated. As he said, [I QUOTE] “Without **equality**, **liberty** would produce the supremacy of the few over the many. **Equality** without **liberty** would kill individual initiative. Without **fraternity**, **liberty** and **equality** could not become a natural course of things.” [UNQUOTE]

14. It is critical to keep this intricate and delicate balance in mind when exploring the relationship

between the three branches of the state – that is, the judiciary, the legislature and the executive. They are all **equal**. They should all be conscious of their **liberty** and strive to protect their **autonomy**. And yet, they should be careful not to disturb the **fraternity** of the separation of powers by even unknowingly intruding into the domain of either of the two other branches.

15. Sobriety and discretion in communication between the three branches is also extremely advisable. This will promote and enhance **fraternity** between three **equal** branches of the state, all of which have a certain **responsibility** to the Constitution. It will also reassure the ordinary citizen that the Constitution is safe – and in mature hands. And that the three branches are fulfilling their obligations in accordance with the spirit of the Constituent Assembly.

Ladies and Gentlemen

16. Our fundamental commitment must continue to be to take the values of our Constitution – and the fruits of our social, economic and political development – to the very grassroots of our society. For this we must make constant efforts to raise standards of subordinate institutions and bring them at par with apex institutions in all spheres.

17. There should no doubt be emphasis on Ministries and Departments of the Union government – but also on how our constitutional project is being taken forward by village and block-level institutions. The legislative sanctity of Parliament is important. But so is that of every gram panchayat. And this must demand attention from each one of us.

18. Perhaps the greatest challenge is before the higher judiciary. It is in its mandate to bring justice closer to the people. To cite an example I have given earlier, High Courts need to take up the task of quickly providing certified translated copies of judgements in local and regional languages. Even the hearings in court, if possible, have to be in a language that is understandable to the ordinary litigant. The process of case disposal too has to be made faster.

19. It is upon the higher judiciary to mentor and encourage the lower judiciary. In this, the cooperation of state governments is very much necessary. It is for state governments to ensure that the district and subordinate court judges are not denied their due perquisites and facilities. And it is for the High Courts to urge subordinate courts to be more efficient and conclude cases faster. I appreciate that this concern is close to the heart of the Chief Justice and the other Judges of the Supreme Court.

20. I am glad to note some High Courts are taking steps in these directions. As of June 30, 2017, there were about 76,000 old cases, pending for five years or more, in sessions and district courts under the High Court of Jharkhand. The High Court has set a target of March 31, 2018, to dispose of almost half these cases.

21. In a related manner, the High Court of Chhattisgarh has set subordinate courts a deadline of April 30, 2018, for disposal of cases pending for over 10 years. And of September 30, 2018, for disposal of cases pending for between five and 10 years. The High Court of Chhattisgarh has also started to make provision for availability of Hindi versions of judgements and orders.

22. I commend these initiatives. I am sure other High Courts are also moving ahead with a similar sense of public service.

Ladies and Gentlemen

23. The Constitution is not just an abstract ideal. It has to be made meaningful to the lives of ordinary people in every street, every village and every **mohalla** of our country. It has to somehow connect with their everyday existence and make it more comfortable.

24. As Mahatma Gandhi told us, in every decision we take, every measure we consider, we must ask ourselves if what we are about to do will be of use and benefit to the poorest and weakest person we have met. And in some manner restore to this person control over his or her destiny.

25. To my mind that would be the greatest tribute to the Constitution that we are celebrating today.

Thank you

Jai Hind!

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AKT/SH

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PM lays stress on balance of power

Meeting of minds:Prime Minister Narendra Modi with Chief Justice of India Dipak Misra and Law Minister Ravi Shankar Prasad at the National Law Day event in New Delhi on Sunday.PTIPTI

Paying homage to the members of the Constituent Assembly on the occasion of National Law Day on Sunday, Prime Minister Narendra Modi said the balance of power among the executive, the legislature and the judiciary had been the backbone of the Constitution.

Mr. Modi's statement came on a day when Union Law and Justice Minister Ravi Shankar Prasad said the Supreme Court verdict against the National Judicial Appointments Commission had showed the judiciary's distrust in the ability of the Prime Minister and Law Minister to appoint a fair judge. A day earlier, Finance Minister Arun Jaitley had spoken about the importance of the separation of powers among the three branches of the state.

"The government, the judiciary and the bureaucracy are all part of one family. We should strengthen one another. The Supreme Court has itself said that every organ of the state should remain within its allotted space," Mr. Modi said. "Each organ should do its own duty under the Constitution."

Founding fathers lauded

In his *Mann Ki Baat* address to the nation earlier in the day, Mr. Modi commended the founding fathers of the Republic for producing a document that was the spirit of Indian democracy.

"Today is 26/11. The 26th of November is our Constitution Day. The Constitution of India was adopted by the Constituent Assembly on this day in the year 1949. Our Constitution was implemented on the 26th of January 1950, which we celebrate as our Republic Day. The Constitution of India is the spirit of our democracy. This is the day to remember the members of the Constituent Assembly. They all worked hard for about three years to draft the Constitution. And, whoever reads that debate will feel proud about what actually the vision of a life dedicated to the nation is," he said.

"Can you imagine how hard their task would have been to frame the Constitution of our country which has such big diversities? They must have shown a great sense of understanding and farsightedness and that too at a juncture when the country was getting rid of the bondage of slavery. Now, this is the responsibility of all of us to make a New India in the light of the thinking of the makers of our Constitution."

The Prime Minister said equality for all and sensitivity towards all was the characteristic of the Constitution.

It guaranteed fundamental rights to all, let they be the underprivileged or oppressed, the backward or deprived, a tribal person or a woman.

"It is our duty that we abide by our Constitution in letter and spirit. Citizens and administrators alike must move ahead in accordance with the spirit of our Constitution," he said.

He made special mention of the contribution of Dr. B.R. Ambedkar and Sardar Vallabhbhai Patel.

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PM addresses valedictory session of National Law Day - 2017

The Prime Minister, Shri Narendra Modi, today addressed the valedictory session of the function to mark National Law Day – 2017, at Vigyan Bhawan in New Delhi.

He described the Constitution as the very soul of our democratic structure. He said the Day is an occasion to pay homage to the makers of the Constitution. He said the Constitution has stood the test of time, and proved the naysayers wrong.

The Prime Minister quoted extensively from leaders including Dr. B.R Ambedkar, Dr. Sachidanand Sinha, Dr. Rajendra Prasad, and Dr. Sarvepalli Radhakrishnan, during his address. These quotations were used to highlight several important facets of the Constitution, and governance. These themes included the longevity (or immortality) of the Constitution, its workability and flexibility.

The Prime Minister said that the Constitution has been a guardian for us. He emphasized that we, the people, must also work as per the expectations that our guardian – the Constitution – has from us. He said that keeping in mind the needs of the country and the challenges facing it, the various institutions of governance should support and strengthen each other. He said that in the next five years, we should channelize our energies to build the New India – the nation that our freedom fighters dreamt of.

The Prime Minister said that the Constitution has also been described as a social document. He said it is indeed unfortunate that the weaknesses that had been identified in our country at the dawn of independence, have still not been entirely eradicated. He said the current time can be described as a golden period when India is full of self-confidence. He said this constructive atmosphere should be used to move swiftly towards the creation of New India.

Emphasizing the importance of "Ease of Living," the Prime Minister said that the role of the Government should be one of a facilitator, more than a regulator. The Prime Minister gave several examples of "Ease of Living" that have been brought about in the last three years, such as quicker income tax refunds, quicker passport delivery etc. He said these initiatives have had a positive impact on all sections of the society. He said about 1200 archaic laws have been repealed. He said ease of living has also had a positive impact on "ease of doing business." He said Lok Adalats can play a key role in reducing pendency of cases in the judiciary. He outlined several other steps that are being taken to improve "ease of access to justice."

Mentioning the massive expenditure that has to be borne by exchequer on account of frequent elections, and other related issues such as diversion of security forces and civil staff, and impact on development programmes, the Prime Minister called for a constructive discussion on the possibility of holding simultaneous elections for the Union and State Governments.

The Prime Minister emphasized that balance between the executive, legislature and judiciary has been the backbone of the Constitution. In this context, the Prime Minister also quoted from judgements of the Supreme Court.

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Naga talks still on, panel told

R.N. Ravi

Naga interlocutor R.N. Ravi told a parliamentary panel here on Monday that “no deadline” could be fixed for the Naga peace agreement and talks were on with at least five or six Naga groups other than the National Socialist Council of Nagaland (Isak-Muivah).

Mr. Ravi is learnt to have told the parliamentary Standing Committee on Home Affairs that the NSCN-IM had been insisting that since it was the “legitimate Naga group”, negotiations should take place only with it but that was not the stand of the Government of India.

Framework agreement

On August 3, 2015, Mr. Ravi had signed a “framework agreement” on behalf of the Union government with the NSCN (Isak-Muivah) group to end the decades-old Naga insurgency.

The agreement was signed at the residence of Prime Minister Narendra Modi.

Open to all

On Monday, Mr. Ravi who was asked to appear before the panel to explain the status of the Naga peace deal told parliamentarians that the “Government of India wanted to take all the Naga groups on board.”

“All members wanted to know when the details of the framework agreement will be disclosed by the Centre? The Naga interlocutor said negotiations were still on and the Government of India was not comfortable with only one or two main groups such as the NSCN-IM coming on board, but wanted to take into the fold the other groups as well,” an MP who attended the meeting told *The Hindu* .

The Centre recently gave a year’s extension to Mr. Ravi.

Nagalim plan

The NSCN-IM has been fighting for ‘Greater Nagaland’ or Nagalim — it wants to extend Nagaland’s borders by including Naga-dominated areas in neighbouring Assam, Manipur and Arunachal Pradesh, to unite 1.2 million Nagas.

Assam, Manipur and Arunachal Pradesh, all BJP-ruled States that have Naga populations have refused to part with even an inch of land to make the peace deal a success.

The Centre is yet to spell out the details of the Naga agreement. An official said the Naga peace talks were delayed after the death of one of the leaders of NSCN (IM), Isak Swu, last year.

Mr. Swu (86) passed away on June 28 in a Delhi hospital.

The other leader T. Muivah has been carrying on the negotiations on behalf of the group.

The parliamentary panel that had met earlier to discuss the security situation in the Northeast States had asked Mr. Ravi to appear before it on Monday to discuss the Naga deal.

The Centre and the NSCN-IM had earlier issued a joint statement that they were “closer than ever before to the final settlement and hope to conclude it sooner than later.”

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Sink your differences

It is disconcerting that differences between the executive and the judiciary are emerging often in the public domain these days. By raising the question whether the judiciary does not trust the Prime Minister to make fair judicial appointments, and harping on the need to maintain the balance of power between the executive and the judiciary, representatives of the Union government have risked the impression that they are putting the judiciary on the defensive. Read between the lines and the executive's profound dissatisfaction with the state of play in relations between the two wings is evident. Union Law Minister Ravi Shankar Prasad is undoubtedly entitled to hold the view that the Supreme Court's 2015 verdict striking down the law creating the National Judicial Appointments Commission (NJAC) reveals the judiciary's distrust in the Prime Minister and the Law Minister. His question whether an audit is needed to determine what has been lost or gained since the collegium system was created in 1993 is not without merit. However, it is debatable whether these issues should have been raised in public, that too in the presence of the Chief Justice of India and his fraternity. Chief Justice Dipak Misra seemed coerced into responding that the judiciary reposes the same trust that the Constituent Assembly had in the Prime Minister, and that the judiciary indeed recognised and respected the separation of powers enshrined in the Constitution. There was really no need for such a public affirmation of first principles in a democracy.

However, it does not mean that major concerns over whether there is real separation of powers, whether public interest litigation has become an interstitial space in which judges give policy directives, and whether the country needs a better system than the present one in which judges appoint judges should be brushed aside. The present collegium system is flawed and lacks transparency, and there is a clear need to have a better and more credible process in making judicial appointments. It is clear that differences over formulating a fresh Memorandum of Procedure for appointments are casting a shadow on the relationship. It is best if both sides take a pragmatic view of the situation and sink their differences on the new procedure, even if it involves giving up a point or two that they are clinging to. For a start, they could both disclose the exact points on which the two sides differ so that independent experts will also have a chance to contribute to the debate. If it is the right to veto a recommendation that the government wants on some limited grounds, the Collegium must not be averse to considering it. Resolution of this matter brooks no further delay.

Revving up infrastructure spending is necessary, but not sufficient

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First among equals

Legislature should have the independence of making laws, the executive should have independence in taking decisions," Prime Minister Narendra Modi said on Sunday. The law minister and the finance minister have also spoken on the separation of powers, which is a load-bearing beam of the fundamental structure of the Constitution. However, while the prime minister has stressed its need, he has done so in a way that suggests that the government would like to see the legislature, the judiciary and the executive as silos at arm's length from each other, with each allowing the others to go about their business. Law Minister Ravi Shankar Prasad has said that if the people can trust the prime minister with the nuclear button, surely he can be trusted to appoint judges through his law minister. This is an apples and pears argument which seems to misunderstand, or to deny, that in the constitutional scheme, separation of powers is also a way of institutionalising checks and balances.

Finance Minister Arun Jaitley has said that the judiciary may intervene in the event of executive failure, but only to issue directives to spur it into action. It should not commit judicial overreach by getting into executive functions, like organising the running of sports organisations or dealing with the non-performing assets of banks. True, but Jaitley has neglected to acknowledge the reality that much of progressive law was developed in courts through the innovation of public interest litigation, precisely because the legislatures had failed to enact laws in the public interest. The finest fruit of this process is the entire corpus of environmental law. If the ambit of the PIL territory has widened and the people regard the judiciary as the court of first resort, it only betrays a lack of confidence in securing executive or legislative action.

The prime minister affirmed the nation's allegiance to the balance of powers, but stressed that each pillar of democracy should be aware of its "limits". The president drew attention, instead, to the "intricate and delicate balance" between them. The pillars of democracy are not supposed to stand coyly aloof, careful not to trespass. They were designed to lean into each other with countervailing force, in order to hold up the edifice of democracy. Besides, amidst the high-minded talk of the equality of the three institutions, it is all too easy to forget that the judiciary is the first among equals. It is the custodian, interpreter, upholder and defender of the Constitution. The power of judicial review sets it above the others. If the government tries to even the odds, it must run the risk of being perceived to be in search of a "committed judiciary", a mercifully short-lived institution which India's people cast into the dustbin of history in 1977.

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The Pai rule

Earlier this year, I wrote a column about Indian-American Ajit Pai (no relation to the author), who was made head of the Federal Communications Commission (FCC) by US President Donald Trump in January. Since Pai was already a serving FCC member since 2012, his appointment did not need to pass scrutiny by the US Senate or Congress.

Pai is a Republican who holds right-leaning views on how “open” the internet needs to be. He prefers that the internet be a “free market” rather than a resource that is neutrally available to all who seek access to it. Net neutrality, as per Wikipedia, means that “Internet service providers and governments regulating the Internet should treat all data on the internet the same, not discriminating or charging differentially by user, content, website, platform, application, type of attached equipment, or mode of communication”.

All data over the internet travels in “packets” and these packets can contain anything—voice, emails, instant messages, advertising, e-commerce, and news. An open internet allows for all packets to be treated the same, regardless of what information the packets carry, or from where they have originated. Under net neutrality laws, it is legal to charge for greater consumption of these packets, which means a heavy user of data packets would pay more than light users. But it is not legal to discriminate, whether through pricing or other methods, based on what the packets themselves contain, where they come from, or who is accessing them.

Last week, Pai issued proposals to dump the net neutrality laws that are currently in effect in the US. Despite the oxygen-like importance of internet access in the US, not everyone in the US has access to broadband, and these rules would slow down efforts to provide broadband for all. India is even further behind. Thankfully, the principles of net neutrality were established in India last year by the Telecom Regulatory Authority of India (Trai).

The Obama administration made attempts to address this disparity of access, which included initiatives to develop infrastructure. Pai is now attempting to cut these measures. His proposals will reclassify basic cellular internet access as sufficient to establish “neutrality”, even if it is more expensive, offers different connection speeds, or is otherwise inferior to other internet connections. This essentially means a user with basic 2G access is considered to have the same access as someone with 4G/LTE or a fixed broadband access point. Instead of continuing to make high-speed internet more widely available in the US, Pai’s regulations would just move the target closer for internet service providers on what qualifies as “equal” or “neutral” service.

Pai’s rules would allow a carrier such as Verizon or AT&T to restrict access based on what businesses are willing to pay them. For instance, if a web search engine paid more for services to these providers than other search engines, then its search results would be given priority and would reach consumers sooner than content from another engine would. Carriers could even ask their users to pay a separate fee to access a different search engine. This would have a direct impact on revenue, since search engines make money through advertisements, and a larger, captive user base means more revenue.

The internet world is already incestuous. For example, Verizon owns Yahoo, which it acquired earlier this year. AT&T is trying to acquire Time Warner in a copy-cat acquisition but has run into a tough spot with regulators—for reasons other than net neutrality. In the absence of net neutrality regulation, Verizon could discriminate against customers who utilize a search engine other than Yahoo by reducing connection speeds, or even stop them from accessing another search engine such as Google or DuckDuckGo.

Itemized internet packages are already a reality in countries that don't have net neutrality legislation, and were the route that Facebook and others tried by using the cunningly named term "free basics" to circumvent the imposition of net neutrality rules in India. Thankfully for Indians, Trai, after reaching out to the Indian public for feedback, took a decision in February 2016 that prohibited telecom service providers from levying discriminatory rates for different packet types, thereby effectively establishing net neutrality regulation in India.

Countries like China and the UAE tightly control internet data based on where it's coming from, and based on what kind of information the data packets contain. For instance, the UAE does not allow subscribers to make calls over web-based alternatives such as Viber, instead mandating that VoIP traffic can only flow through home-grown telecom operators. China's internet market is famously closed, thereby allowing home-grown internet firms a distinct advantage. In other countries which do not have net neutrality laws, providers offer mobile internet packages comprising different types of services. Citizens of such countries might have to pay a certain amount to access Facebook and WhatsApp, and a separate amount to chat with friends via iMessage or Skype.

Under Pai's rules, if an internet service provider decides that it does not want to allow users to access a certain type of content, it could slow down connections to those sites, and even block them completely. This amounts to privately sponsored censorship, at a time when many observers feel that the internet should become more open. Today's world is one where fake news, misinformation and polarized views are increasingly easy to broadcast—and if firms can ensure captive audiences beyond what they are already capable of doing simply because of their large user bases, we are more at risk. In the non-internet world, this is akin to saying that if I subscribe to newspaper X which holds a certain set of views, newspaper X can block me from subscribing to newspaper Y, which holds a different set of views. The very idea is ridiculous.

Pai's rules do not augur well for Americans.

Siddharth Pai is a world-renowned technology consultant who has personally led over $20 billion in complex, first-of-a-kind outsourcing transactions.

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The judiciary needs a Ulysses pact

In the last few weeks, the moral and legal standards of the higher judiciary have taken a perceived turn for the worse. In this instance, it was brought about by the Central Bureau of Investigation (CBI) which highlighted the possibility of corruption and criminal conspiracy to gain some favourable orders. One of the orders in question was passed by a bench with Justice Dipak Misra, now Chief Justice of India (CJI), as the presiding judge.

Following CBI's reports on the matter, the Campaign for Judicial Accountability and Judicial Reforms filed a writ petition to set up a special investigation led by a retired CJI. Since the order in question was passed by Justice Misra, due process and common sense require that no aspect of whether the matter be investigated further (or not) should be determined by Justice Misra. However, a bench led by Chief Justice Misra declared that the chief justice alone has the prerogative to determine the composition of benches to hear cases. Even those unfamiliar with legal procedures can recognize the impropriety. This is a matter where Chief Justice Misra can potentially become a judge in his own case (by determining the bench), thus breaking one of the cardinal rules of due process.

The immediate case throws light once again on judicial impropriety and corruption, and raises a larger issue of dealing with matters of judicial propriety and abuse systematically and structurally. The higher judiciary can consider two available types of structural reform for the future.

The first option is to allow for a system of checks and balances by allowing external agencies—mainly controlled by the executive—to design and apply standards. In this context, there is the oft-repeated trade-off between judicial independence and scrutiny; and repeatedly India has erred in favour of judicial independence. Indian judiciary is especially cautious about executive interference since Indira Gandhi's attempts to have a "committed" judiciary in the 1970s. Post Emergency, the Indian judiciary has used every means to remove any input and interference from the executive. In fact, judicial independence is one of the reasons the Campaign for Judicial Accountability and Judicial Reforms requested an investigation led by a retired chief justice, and not the executive.

If the persistent stand of the judiciary and the larger legal community is against checks and protocols overseen by the executive, then there is only one other path the judiciary can walk—the members of the higher judiciary must set forth protocols and procedures akin to the Greek myth about Ulysses' pact with his men.

Ulysses wanted to hear the Sirens' song—which, he knew, would render him incapable of rational thought, and would tempt him to the Sirens, thereby placing his ships in danger. He put wax in his men's ears so that they could not hear. And then Ulysses had his men tie him to the mast so that he could not jump into the sea. He ordered them not to change course under any circumstances, and to keep their swords upon him and to attack him if he should break free of his bonds.

Ulysses was protecting himself from future temptations and distractions, caused by his own fallibility and imperfections, by binding his hands. Like Ulysses, the judiciary must create rules and protocols, emerging from within the institution, to bind the hands of future judges.

One issue pertinent to this case, but also to prior cases, is recusal. Often judges recuse themselves when they have, or might be perceived to have, an interest in the case and its outcome. Judges recuse themselves when one of the lawyers pleading a case is a family member, or if they own stock in the company that is pleading the case. The problem with very low thresholds for recusal is that litigants may manipulate the rule of recusal to eliminate an

unfavourable opinion from a tough judge. On the other hand, high thresholds may lead to situations where the judge may pass orders on matters that directly affect her. But the judiciary must walk this tightrope and create a system of rules and protocols for recusal, which is currently found by combining many different ideas from different judicial opinions.

In the present case, Chief Justice Misra declared that the CJI is the master of the court roster. Since the CJI is chosen by seniority, this is an excellent ex ante rule for every circumstance except one—when there is a question of the propriety of the individual chief justice in question. Since the CJI is also the head of the judiciary, a questionable action by the CJI with respect to the court roster can have terrible consequences for the moral standards required by judges of lower courts. The CJI must lead by example, and therefore we must tie the hands of the individual occupying the office. Members of the higher judiciary must formulate the course of action for when the CJI should not, and therefore cannot, assign judges to a case.

The judiciary must also lay down procedures to deal with external enquiries through the CBI. An option is to create a group within the judiciary that will cooperate with investigations, or as the petitioners suggested, the investigation could be led by retired members of the court.

The Indian judiciary has become all powerful, mostly by taking on enormous authority in policy areas, that are technically beyond its ambit. And so, it must go a lot further to bind its hands, so that judges do not abuse the authority granted to them. Without a Ulysses pact, the judiciary will rule by discretion, and lose its exalted standing with the people it serves.

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Comments are welcome at views@livemint.com

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Smt Maneka Sanjay Gandhi launches an intensive program to train Elected Women Representatives of Panchayati Raj Institutions

Smt Maneka Sanjay Gandhi launches an intensive program to train Elected Women Representatives of Panchayati Raj Institutions

Around 20,000 EWRs to be trained by March, 2018

The Minister of Women and Child Development, Smt Maneka Sanjay Gandhi launched an intensive training program for Elected Women Representatives (EWRs) of Panchayati Raj Institutions and Master Trainers, in New Delhi today. This capacity building program is being organized by National Institute of Public Cooperation and Child Development (NIPCCD) of the WCD Ministry which will ultimately train approximately twenty thousand EWRs covering nearly 50 EWRs from each district by March, 2018.

Addressing the participants at the inauguration of the program, Smt Maneka Sanjay Gandhi said that this is an historic step since for the first time ever an initiative of this scale has been taken up to train EWRs who will go out and administer the villages professionally. It is regrettable that not many women sarpanches and EWRs come forward to take up their responsibilities and mostly allow their husbands to take the lead. So, they remain ‘sarpanchanis’ in name only, the Minister added. She said that training two lakh women sarpanches across the country will help bring following important changes:

1. It will help to create model villages.
2. It will help prepare women as political leaders of the future.

The training program will include simple engineering skills will give them an insight into women’s issues as well as focus on education and financial matters, Smt Maneka Gandhi explained. The Minister disclosed that awards will be given to the Master Trainers to those who have succeeded in empowering EWRs of their areas. The Minister also appreciated the initiatives taken by some states to specify certain minimum education level for sarpanches and panchayat members.

The Capacity building of Elected Women Representatives (EWRs) is critical to empower women to participate effectively in the governance processes. This will help them assume the leadership roles expected of them and guide their villages towards a more prosperous future. About 150 master trainers and 450 EWRs attended today’s program.

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Presently, there are around 40 state and central laws regulating different aspects of labour, such as resolution of industrial disputes, working conditions in factories, and wage and bonus payments. Over the years, some experts have recommended that these laws should be consolidated for easier compliance.[1] Since the current laws vary in their applicability, consolidation would also allow for greater coverage.

Following these recommendations, the Code on Wages was introduced in the Lok Sabha in August 2017. The Code consolidates four laws related to minimum wages, payment of wages and bonus, and a law prohibiting discrimination between men and women during recruitment promotion and wage payment.

The Code was subsequently referred to the Standing Committee on Labour for examination. The Committee has met some experts and stakeholders to hear their views. In this context, we explain the current laws, key provisions of the Code, and some issues to consider.

Who will be entitled to minimum wages?

Currently, the Minimum Wages Act, 1948 lists the employments where employers are required to pay minimum wages to workers. The Act applies to the organised sector as well as certain workers in the unorganised sector such as agricultural workers. The centre and states may add more employments to this list and mandate that minimum wages be paid for those jobs as well.[2] At present, there are more than 1700 employments notified by the central and state governments.[3]

The Code proposes to do away with the concept of bringing specific jobs under the Act, and mandates that minimum wages be paid for all types of employment – irrespective of whether they are in the organised or the unorganised sector.

The unorganised sector comprises 92% of the total workforce in the country.[1] A large proportion of these workers are currently not covered by the Minimum Wages Act, 1948. Experts have noted that over 90% of the workers in the unorganised sector do not have a written contract, which hampers the enforcement of various labour laws.[4]

Will minimum wages be uniform across the country?

No, different states will set their respective minimum wages. In addition, the Code introduces a national minimum wage which will be set by the central government. This will act as a floor for state governments to set their respective minimum wages. The central government may set different national minimum wages for different states or regions. For example, the centre can set a national minimum wage of Rs 10,000 for Uttar Pradesh and Rs 12,000 for Tamil Nadu. Both of these states would then have to set their minimum wages either equal to or more than the national minimum wage applicable in that state.

The manner in which the Code proposes to implement the national minimum wage is different from how it has been thought about in the past. Earlier, experts had suggested that a single national minimum wage should be introduced for the entire country.[1,5] This would help in bringing uniformity in minimum wages across states and industries. In addition, it would ensure that workers receive a minimum income regardless of the region or sector in which they are employed.

The concept of setting a national minimum wage exists in various countries across the world. For instance, in the United Kingdom one wage rate is set by the central government for the entire country.[6] On the other hand, in the United States of America, the central government sets a single minimum wage and states are free to set a minimum wage equal to or above this floor.[7]

On what basis will the minimum wages be calculated and fixed?

Currently, the central government sets the minimum wage for certain employments, such as mines, railways or ports among others. The state governments set the minimum wage for all other employments. These minimum wages can be fixed based on the basis of different criteria such as type of industry or skill level of the worker. For example, Kerala mandates that workers in oil mills be paid minimum wages at the rate of Rs 370 per day if they are unskilled, Rs 400 if they are semi-skilled and Rs 430 if they are skilled.[8]

The Code also specifies that the centre or states will fix minimum wages taking into account factors such as skills required and difficulty of work. In addition, they will also consider price variations while determining the appropriate minimum wage. This process of fixing minimum wages is similar to the current law.

Will workers be entitled to an overtime for working beyond regular hours?

Currently, the central or state government define the number of hours that constitute a normal working day. In case an employee works beyond these hours, he is entitled to an overtime rate which is fixed by the government. As of today, the central government has fixed the overtime rate at 1.5 times normal wages in agriculture and double the normal wages for other employments.[9]

The Code proposes to fix this overtime rate at twice the prevailing wage rate. International organisations have recommended that overtime should be 1.25 times the regular wage.[10]

Does the Code prohibit gender discrimination between workers?

Currently, the Equal Remuneration Act, 1976 prohibits employers from discriminating in wage payments as well as recruitment of workers on the basis of gender. The Code subsumes the 1976 Act, and contains specific provisions which prohibit gender discrimination in matters related to wages. However, unlike in the 1976 Act, the Code does not explicitly prohibit gender discrimination at the stage of recruitment.

How is the Code going to be enforced?

The four Acts being subsumed under the Code specify that inspectors will be appointed to ensure that the laws are being enforced properly. These inspectors may carry out surprise checks, examine persons, and require them to give information.

The Code introduces the concept of a ‘facilitator’ who will carry out inspections and also provide employers and workers with information on how to improve their compliance with the law. Inspections will be carried out on the basis of a web-based inspection schedule that will be decided by the central or state government.

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