Is Big Data a threat to free democratic choice?

The 1928 US presidential elections were a lively affair. Democratic Party nominee Alfred Smith may well have wished they were less so. Backers of Republican nominee Herbert Hoover accused Smith, among other smears, of indulging in “card-playing, cocktail drinking, poodle dogs, divorces, novels, stuffy rooms, evolution . . . nude art, prize-fighting, actors, greyhound racing and modernism”. It was apparently an effective if eccentric bit of calumny. Hoover went on to win.

It is a useful oddity to bear in mind when considering the ongoing Cambridge Analytica scandal. Electoral dirty tricks are a regrettably time-honoured tradition. That Donald Trump’s presidential campaign may have used underhand means to target voters is thus not the central issue. Nor is it that Facebook betrayed user trust, although it certainly had its share of lapses. The heart of the matter is the nature of the bargain users have made with tech companies like Facebook and Google.

When The Guardian reported the story last week, it presented Cambridge Analytica’s alleged use of data from some 50 million Facebook users to target US voters as a data breach. Facebook is contesting that it was a breach. But this is about more than semantics.

A breach would imply a failure in Facebook’s security, and thus liability on its part. Facebook is thus trying to push a different narrative: that academic Aleksandr Kogan, who collected the data via his app, thisisyourdigitallife, did so according to Facebook guidelines. When he then passed on that data to Cambridge Analytica, however, he was in contravention of the guidelines and Facebook took appropriate action.

Facebook is right in claiming that the data was collected as per its guidelines but wrong in claiming due diligence thereafter. The Guardian revealed the Cambridge Analytica angle in 2015. Facebook’s lawyers moved swiftly, demanding that Kogan and Analytica delete the user data. But the paperwork took two years to complete. Facebook neglected any auditing to confirm that the data had actually been deleted. It also failed to publicly reveal the leak, possibly violating a 2011 agreement about making it clear how user data was used.

These are all lapses for which Facebook should be held to account. Indeed, with the US Federal Trade Commission gearing up to hold its feet to the fire, and the threat of a hefty fine if it is found to have violated the 2011 agreement, Facebook is starting to feel the heat. It has also earned negative publicity and taken a hit to its market value.

But the fact that such vast amounts of data were so easily collected in the first place—and without breaking the rules —points to the larger issues to do with the economics of the internet. Since its inception in 2004, Facebook, more than any other company, has propagated the norm of digital businesses fuelled by private data that users sign over willingly in exchange for notionally free services. Certainly, privacy advocates have helped put some guardrails in place. For instance, in 2015, Facebook altered the rules that allowed apps like Kogan’s to collect data not just on individuals who signed in but also of people on their friends’ lists. However, the core model has remained unchanged.

Can regulatory action change this? To an extent, yes. Data localization conditions can ensure that user data collected within a country must be kept within it. Regulations can also compel businesses to adopt privacy by design principles that foreground user choice and consent. The European Union’s General Data Protection Regulation (GDPR), which takes effect from 25 May this year, has adopted this approach. Perhaps the most stringent data protection regime globally, it will be a litmus test for companies’ ability and willingness to comply. US lawmakers, protective of

Silicon Valley champions until not too long ago, are also starting to lose patience.

Regulations cannot, however, alter the fundamental economic value of user data or the business models they fuel. Besides, the regulatory approach often hinges on user consent as the GDPR does—and the growth of social media companies over the past decade is fair evidence that consent is not hard to obtain, even with the knowledge of private data being signed over. This has political implications as well. Cambridge Analytica and other such firms have boasted of the merits of psychographic targeting based on user data. This is currently a dubious proposition with little proof to back it up. But that might change as algorithms grow more sophisticated. The current controversy may seem far removed from India, but political parties here are also embracing Big Data analytics to understand voter behaviour—and perhaps alter it.

Whether privacy concerns will compel a change in digital business models will depend in the end on the market and consumer choice. If users prioritize privacy enough to opt for currently nascent technologies such as blockchain-based self-sovereign identity systems, Facebook and its ilk's heyday will be a blip in the arc of the digital economy. If not, scandals such as Cambridge Analytica will remain mere speed bumps.

Should the scraping of user data from social media be regulated? Tell us at views@livemint.com

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Engineering democracy

The romance of democracy is that voters, acting as agents collectively, shape their own future. But this idea rests on the presumption that voters are agents, not mere effects of some propaganda machine, some information order that manipulates them: Consent is not manufactured, to use Noam Chomsky's phrase. The information order also has to grant relatively open access and a degree of equality that allows all citizens to be heard, so that our collective decisions are genuinely all-things-considered decisions. The purpose of protecting free speech, making sure media power is not concentrated, information is not secret, and so forth, was to protect democracy itself. Most democracies have long betrayed these ideals, especially asymmetries of power in the information order itself.

The alleged scandal involving Cambridge Analytica's use of the data of more than 55 million Facebook users has once again reopened big questions about the organisation of the information order in a democracy. They have also revealed how so much of the language of our democracy is struggling to come to terms with complex technological developments. The exact nature of this scandal, what laws were violated, who is responsible, will unfold in due course. It is also not entirely clear whether such similar violations have not happened in the past. But the episode has once again opened questions on the nature of democracy.

The first issue at stake is what consent means in the new information order. The conceit, and attraction of the modern information order is that it does things with our consent, in our name, ostensibly to satisfy our desires. But given the complexities of data-sharing, possible third-party uses, or use by friends, through whom your data can be accessed, it is not very clear what we are consenting to, and whether the terms of that consent can be enforced. The idea that simply because you have the formal option of consenting or withholding consent, you can control what can be done with your data seems like a bit of a pipe dream. It has become the normative equivalent of financial derivatives: A mysterious term that ostensibly helps manage risk, but has itself become the risk because we don't know what it is we are authorising.

Also Read | Facebook's Zuckerberg breaks silence on Cambridge Analytica data scandal; admits mistakes, outlines fixes

This scandal should be a reminder of one of Marx's insights: The language of things can disguise the fact that the things signify relationships between people. The use of seemingly anodyne terms like data, technology, information, etc, can disguise the fact that all of these involve profound shifts in power relations between people, and can have implications for democracy. One thing that disguises this banal fact is that the debate over new technology, the power of social media etc, is presented as a debate between technologists and anti-technologists. But the real issue is not that. It is, more, what forms of ownership, what regulatory architectures ensure that the collection of data, the use and profiting from data, do not subvert the ideals of citizenship.

Also Read | Ravi Shankar Prasad warns Facebook on data breach: Can even summon Mark Zuckerberg

We now have an information architecture where a handful of large private players can exercise near monopoly power, with very little accountability on how this power is used. What has facilitated this power is the idea that there is such a thing as private power that is purely private. In older critiques of capitalism, we had to create the hard-won knowledge that private economic power has great public effects. But the rise of the tech companies coincided both with ebbing trust in the state, and a belief that technology was about serving consumers, not distorting the meaning of citizenship. So, in a way, the private sector was given a free pass. In India, the debate has a

slightly different valence.

We are suspicious of the state. But when it comes to the now galloping uses of Aadhaar, beyond very limited, well-defined and sequestered uses, we are ready to give the state everything we have. Even if you trust the state, in our regime there are very few safeguards against contracting of data with private and foreign parties, which is what the game is increasingly becoming about. Second, we are using the specious argument that since private companies have access to data what is wrong in government collecting and linking data. The obvious answer to this has to be that questions will have to be asked of both the public and private sector when it comes to data protection, and its monetisation.

But now there is also a more sinister possibility. What if the state and Facebook or Jio colluded in how data is used? One of the ironies of the Cambridge Analytica episode is how much these companies are dependent on state patronage: Apparently, they were being used by states to effect outcomes in other jurisdictions. Both state surveillance and private power are a challenge for democracy.

But apart from safeguards and regulatory oversight, there is a deeper anxiety this episode once again raises. In India, we had a nice phrase for some forms of democratic mobilisation, “social engineering,” the idea of creating configurations of social groups based on their identity to carve electoral majorities. To some extent, social engineering is inevitable. But there was always the worry that social engineering is rarely about justice. It involves manipulating people’s fears. One of the interesting conceits embedded in projects like Cambridge Analytica and the new science of data-based campaigning is this: Their ability to attract clients depends on their ability to socially engineer electoral outcomes. In computer science parlance, it is a kind of confidence trick that gets you to divulge information. Now the jury is out on how effective all this is. But what exactly is the confidence trick? It is that the voters think they are getting what they want, but all the time it is the clients who are getting out of the voters what they want.

Also Read | Data breach: BJP, Congress, JD(U) on client list of parent firm’s India partner

Is democracy increasingly becoming such a confidence trick, merely a feat of social engineering that a good combination of surveillance and data extraction can profoundly affect? It is premature to panic on this score. But the Cambridge Analytica episode does prompt this question. It does dent confidence in democracy. And it leads to the view that the Chinese state, with its sophisticated arsenal of data-based surveillance, is at least being honest. Voters don’t exercise sovereignty, they are manufactured; they are not causes they are effects. The only question is whether a public authority creates them or a private company. Serious questions for ideas of citizenship.

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Things got worse for CA when UK broadcaster Channel 4 aired a program in which the company's (now suspended) CEO Alexander Nix described some of its dubious election strategies to an undercover reporter. | Photo Credit: REUTERS

Cambridge Analytica (CA) is a data analytics and political consulting firm set up in 2014 with the help of Steve Bannon, former chief strategist of United States President Donald Trump and former head of alt-right media platform *Breitbart News*. It was formed as a subsidiary of SCL, a British company that describes itself as specialising in data, analytics and strategy. Mr. Bannon helped secure funding for CA from American billionaire Robert Mercer and his family, who are major donors to right-wing causes and Republican party campaigns.

Chris Wylie, a 28-year old former employee of the company, revealed details of the company's *modus operandi* to journalist Carole Cadwalladr in an expose published in the *Observer* newspaper last weekend.

According to Mr. Wylie, CA acquired the data in 2014 via personality profiling app thisisyourdigitallife, built by Aleksandr Kogan, an academic at Cambridge University. While the app was downloaded by just 2,70,000 Facebook users, it pulled in data from the "Facebook friends" of these users, allowing CA to harvest the data of 50 million users, without their consent.

Information campaigns were then microtargeted at these users based on their preferences and vulnerabilities (for instance). Mr. Kogan has denied he was aware his tool was possibly being used illegally and says he is being scapegoated by Facebook and CA.

Short of deleting your account, what can you do to limit Facebook's data collection?

Things got worse for CA on Monday when UK broadcaster Channel 4 aired a program in which the company's (now suspended) CEO Alexander Nix described some of its dubious election strategies to an undercover reporter. These strategies included using women and offering deals that are "too good to be true" to politicians, and video-recording these interactions and posting them online in order to discredit a candidate.

SCL, CA and their partners have been involved in political campaigns around the world, including in India, where SCL partnered with Ovleno Business Intelligence Pv.t Ltd., which had claimed on its website (now unavailable) to have worked with the BJP, Congress and the JD(U). Both the Congress and BJP traded charges on Wednesday on this issue.

Cambridge Analytica controversy: Urgent need for data protection laws, say experts

Facebook, in a statement, denied that Mr. Kogan's app involved data breaches but said that Mr. Kogan did not abide by Facebook's rules when he passed on the information to CA/SCL, a fact that came to Facebook's notice in 2015. The social media platform consequently deleted the app and asked Mr. Kogan and others who had been given the data to certify that it had been destroyed.

After the Wylie story broke last weekend, it had come to light that at least some of the data still existed, prompting Facebook to send cybersecurity analysts to CA's London offices for a data audit. These auditors were subsequently recalled owing to a parallel U.K. government inquiry.

CA is being investigated by the U.K.'s Electoral Commission for its role in the Brexit referendum as

well as by the Office of the Information Commissioner (OIC), based on previous reports about its dubious methods.

In the U.S., Special Counsel Robert Mueller, who is investigating Russian links to the Trump campaign, is looking into CA's role in this affair as well.

A House of Commons parliamentary committee has asked Facebook founder Mark Zuckerburg to appear before it to answer questions on CA's data usage. Across the Atlantic, lawmakers have said Mr. Zuckerburg should appear before the U.S. Congress and the European Parliament has said it will investigate the issue.

In the wake of the Facebook-Cambridge Analytica data breach controversy, Anand Mahindra, chairman of the $19 billion Mahindra Group, has mooted the

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Cambridge Analytica’s business isn’t data

As the Cambridge Analytica (CA) scandal unfolds, the Western world is meeting a little-known part of its political industry, the one that has operated in developing nations since at least the 1990s. CA’s methods as revealed by the UK’s *Channel 4 News*, whose reporter posed as a potential Sri Lankan client, may be a bit extreme—but for the most part, the consultancy has been one of many firms that have brought Western-style electioneering to lawless environments in which it has been blatantly abused.

In the US, political marketing developed from an art into a science by the 1980s. By the end of the following decade, the US had an industry of about 7,000 people who worked on campaigns, political scientist Christian Schafferer wrote in 2006. The US market became too competitive for all these professionals. This, however, was the era of Pax Americana, when most countries’ establishments sought American knowledge and at least the external veneer of Western democracy. The Global Political Consultancy Survey of 1998-2000 revealed that 57% of the top US political consultants also worked overseas—in post-Communist countries, Latin America, Africa, the Middle East. Sometimes, from Honduras to Israel, opposing politicians were being advised by different US consultants.

The same survey showed that campaign professionals from Western Europe—especially the UK, France and Germany—were also in demand. In the post-Communist world in particular, their experience was deemed at least as relevant, if not more so, than their US colleagues’. That’s where London-based Cambridge Analytica comes in, too. Political consulting is a globalized market now.

Most of the experience amassed by the consultants is unavailable to the public because their contracts in non-Western nations are secretive. Some case studies are well-known, however. In 1996, *Time* magazine did its *Yanks to the Rescue* cover story on the involvement of US campaign professionals in Russian President Boris Yeltsin’s re-election. It described some of the “American-style dirty tricks” the consultants came up with, such as having Yeltsin’s principal opponent, Communist leader Gennady Zyuganov, trailed by “heckling ‘truth squads’ designed to goad him into losing his temper.” It was the Americans (if they said so themselves—Russian campaign managers, including Yeltsin’s daughter Tatyana Dyachenko, named in the *Time* story as their ultimate point of contact, later disputed their role) who persuaded the Yeltsin campaign to go all-out negative on Zyuganov and communism, a strategy that ultimately worked.

Another story of that type, written by Franklin Foer for *The Atlantic*, appeared earlier this year. It dealt with the role of Paul Manafort in the political career of Viktor Yanukovych, the Ukrainian president deposed by his people four years ago. Manafort supposedly made Yanukovych a winner by teaching him to dress better, smile, make small talk and stay on message—which was a divisive one, pitting Ukraine’s Russian-speaking east (Yanukovych’s home region) against the nationalist west of the country.

What these American stories have in common is a certain contempt for the unpolished locals who supposedly couldn’t have won without Western help. Reality is more complex. Both the 1996 Yeltsin campaign and the campaigns run by Yanukovych and his Party of Regions were incredibly, transparently corrupt. The Yeltsin re-election effort completely ignored campaign spending limits and devoured cash like a steam engine furnace. Media coverage was skewed in Yeltsin’s favour, not just because journalists overwhelmingly backed him but because media owners were part of the campaign. Administrative pressure helped drive turnout—not as much as in subsequent Russian elections, but noticeably. As for Yanukovych, generously funded by eastern Ukrainian oligarchs, he and his allies actively bought votes both with targeted social spending and with

straight handouts—bags of buckwheat, as Ukrainians put it. Did the layer of Western varnish on all these non-American dirty tricks win the day? Did the Americans care about what was underneath the varnish? The honest answers are no and no.

Cambridge Analytica's foreign campaigns present a similar picture. The case studies published on the firm's website discuss polling, voter behaviour analysis and message crafting. One layer down, there are vicious negative campaigns and turnout suppression tactics such as organizing anti-election rallies in Nigeria in 2007. Deeper still, there's the entire arsenal of hybrid regimes that crave the outward trappings of democracy but feel the need to control it. Cambridge Analytica knows about that layer and, to an extent, relies on it to amass a successful portfolio. It doesn't, however, operate in that layer; like other consultants in similar situations, it gets paid to legitimize it with the outward appearance of Western-style adversarial campaigning.

The Kenyan opposition is demanding an investigation of Cambridge Analytica's role in "spreading divisive propaganda" ahead of last year's election won by President Uhuru Kenyatta. In the direct aftermath of the vote, however, the opposition wasn't saying it had been won through any kind of propaganda. It claimed the election commission had been hacked; earlier that year, the commission's head of technology had been murdered. Vote buying and shenanigans involving semi-literate rural voters are rife in Kenya, too. Was it Cambridge Analytica that carried the day for Kenyatta? The jury is out; the British firm, however, helped create evidence of a legitimate campaign—while US and Canadian consultants who were helping the opposite side build an alternative vote counting system were arrested and deported a week before the election.

On the *Channel 4* video, CA chief executive officer Alexander Nix said his firm could arrange honey traps and frame opponents for corruption. Developing world politicians, however, don't really need that kind of help from CA. They're better at this kind of thing than any Western operatives: It's their bread and butter in the corrupt systems where they know all the ropes. What they need is a consultant comfortable with their practices who's able to deliver the slides necessary for them to go through the motions of Western-style electioneering. Willingly or not, many Western political marketers play this role, which isn't unlike the one played by the developing world politicians' Savile Row tailors.

In recent years, since the emergence of the social networks and their successful use by Barack Obama, the consultants have been selling their clients a new suit: Big data. Nix tried to convince the *Channel 4* undercover reporter that his firm had done "all the data, all the analytics, all the targeting" for Donald Trump's 2016 campaign—something that is blatantly not true given that the campaign's digital guru, Brad Parscale, also worked with a team seconded by Facebook. But a real client wouldn't have bothered to fact-check Nix. Ultimately, big data gathering and analysis wouldn't be required in Kenya, Nigeria or a post-Soviet country. Bragging rights—"I used the same people who got Trump elected"—would be infinitely more valuable.

If the Cambridge Analytica scandal sheds some light on the overseas work of Western political consultants and results in some kind of regulatory crackdown on this opaque and ethically questionable industry—which is essentially all about commercialized election interference—it'll serve a useful purpose. But it's at best nearsighted to take CA's sales pitch at face value. The real problem with the overseas exploits of this and other firms is that the elections in which they take part often aren't genuine. Only the developing nations' own citizens can solve that one.
Bloomberg View

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When truth loses

Fake news, also known as false news, has been a much-discussed phenomenon since the epochal Brexit referendum and the election of Donald Trump as U.S. President, yet has resurfaced in a major way in the past week with news of the Facebook-Cambridge Analytica data crisis. This crisis has raised troubling questions about the harvesting of the personal data of millions, and their use in influencing those two defining political events of 2016.

A recent article in Science analyses the prevalence of false news and delves into the reasons for its proliferation. The results of the research, which studied 126,000 stories tweeted by approximately three million people more than 4.5 million times between 2006 and 2017, might leave cynics unsurprised: The MIT researchers found that false news spreads “farther, faster, deeper, and more widely” than true news. Yet what might surprise even cynics is that this difference was not due to bots and automatons, but to the efforts of human tweeters. The persons tweeting false stories typically have fewer followers, follow fewer people, and have been on Twitter for a relatively short time. The study also found that false news diffused to between 100 and 100,000 people routinely, whereas truth only reached up to 1,000 people. Many more people retweeted false news than truth. True news took six times as long as falsehood to reach just 1,500 people. They also found that falsehood was 70% more likely to be retweeted. The key reasons behind this, according to the authors, are the emotions inspired by the two types of news. While they found that false news inspired surprise and disgust, truth caused sadness, anticipation, joy and trust. Evidently, the former set is more powerful. Perhaps not coincidentally, psychological analysis was extensively employed by Cambridge Analytica, the data company that exploited the personal data of social media users to target certain demographics with political messaging designed to influence their voting behaviour.

In the same issue, Science published another study which discusses the role of bots and deliberate amplification of fake news. In an email to The Hindu, author Fillipo Menczer of Indiana University, clarified, “The MIT study focusses on one of these factors, namely the novelty of false news. Other factors include cognitive, social, and algorithmic biases that make people vulnerable to manipulation — engagement-based ranking, limited attention, selective exposure, confirmation bias, echo chambers…” Mr. Menczer highlighted the supplementary materials section of the MIT work which shows that when the contribution of bots is factored out, the spread of false news is suppressed more than that of true news. Therefore, while humans do have an active role in spreading false news, the role of bots as an amplifying factor cannot be discounted.

What these studies suggest is that understanding how and why false news spreads, establishing fact-checking sites and spreading awareness among people not to get taken in by “novelty” value when retweeting or spreading stories could be the key to reducing the spread of false news.

The India-Japan economic relationship remains underwhelming in relation to strategic ties

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One nation, many religions

“It was not in contemplation of the framers of the constitution to add to the list of religious minorities,” said the Supreme Court in the Bal Patil case (2003) refusing recognition of the Jains as a religious minority. In one of the most regressive judgments, the court, following the oft-repeated rightist argument, went on to observe that the “ideal of a democratic society, which has adopted right of equality as its fundamental creed, should be the elimination of majority and minority and so-called forward and backward classes.”

The apex court further directed the Minority Commission to eliminate minorities when it shockingly said that “commissions set up for minorities have to direct their activities to maintain integrity and unity of India by gradually eliminating the minority and majority classes”. Through these kinds of judgments, the highest court of India has given legitimacy to those who believe in the “one nation, one religion” slogan.

Religion is an indispensable part of human existence. Indians are essentially religious. Religion is still the alpha and omega of Indian life. The recommendation of the Karnataka government to the central government for the recognition of the Lingayats as non-Hindus and as a distinct religious minority has once again revived this debate. Though the Congress may win the small battle in Karnataka with this controversial decision, it is bound to lose the war in the Hindi belt. No one will remember that this demand is more than a hundred years old and that the Lingayats are distinct from Hindus in several fundamental beliefs.

But then, does the Indian Constitution really prohibit the addition of any new religion? Does freedom of religion mean following only existing religions? Does freedom of religion not include freedom within religions and freedom to establish a new religion? Is recognition by law necessary before a new religion is born?

Article 25 gives freedom to every individual to profess any religion of her choice. Freedom of religion includes freedom from religion as well. Thus there is no bar in the establishing or forming of new sects within a religious denomination. When the Constitution was drafted, Indic religions were included within the definition of Hindu and thus the Sikhs, Jains and Buddhists were considered as Hindus. The Hindu Marriage Act, 1955, too, gave a negative definition to the term Hindu by saying that anyone who is not a Muslim, Christian, Jew, Parsi etc will be considered Hindu.

Read | Elections coming, Karnataka for special status to Lingayats

The Lingayats are explicitly included as Hindus. The Jains protested immediately after the commencement of the Constitution on January 26, 1950, and Nehru on January 31, 1950, clarified in writing that the Jains were a distinct religious minority. The Sikhs under Parkash Singh Badal have been burning copies of Article 25 opposing inclusion of the Sikhs as Hindus. Freedom within religions will include freedom to go out of that particular religion and establish new religions.

Every individual, as part of her right to dignity, is free to pursue her own conscience and truth. Religion is basically what an individual does with her loneliness. Thus religious experience is a personal experience for those who want to believe in it. In Ratilal Panachand Gandhi v. State of Bombay (1954), the Supreme Court admitted that “every person has fundamental right. to entertain such religious beliefs as may be approved by his judgment or conscience.” Thus, the Indian Constitution gives full autonomy to each individual to have a belief system or religion of her choice. If some others follow a similar belief system, they may assert it as a right of a new sect or distinct religion. No state or law can interfere with this individual freedom. Fundamental rights are

not dependent on constitutional recognition.

This writer has been opposing even the court's power to decide essential or non-essential features of any religion. It is the right of the individual to decide what she considers essential and in the US it is called the "assertion test". As Justice Hugo Black of the US Supreme Court rightly held in Engel v. Vitale, "religion is too personal, too sacred, too holy to permit its 'unhallowed perversion' by a civil magistrate." Thus, if the Lingayats think that they are distinct from Hindus, they are entitled to believe that they are a different religious community in their own right. No one has the right to force a Hindu identity on them. In fact, generally such groups continue to assert membership of the original religion and followers of the original religion consider them as apostates.

The Lingayat leadership is under an erroneous belief that the status of a religious community is dependent on its recognition by law. As early as 1930, the Permanent Court of International Justice, in an advisory opinion in the Graeco-Bulgarian community case, defined community not in terms of numbers, but in terms of shared religious, racial and linguistic traditions, traditions that the group wished to preserve and perpetuate through rituals, education and socialisation of the young.

The existence of a community, ruled the court, is not dependent upon recognition by law. If a community exists in the shape of a group of members united by a host of cultural factors that are distinctive to them, and if this community is intent on maintaining these cultural markers, this is more than enough reason to regard that group as a distinct community.

In fact, in N. Ammad vs The Manager, Emjay High School & Ors (1998), even our Supreme Court had held that minority status is a matter of fact and does not require state recognition. In fact, the Centre has no role in defining minorities, which are to be defined at the level of the state.

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Malaysia approves law against fake news

Malaysia's government on Monday pushed a law through Parliament that makes "fake news" punishable with a maximum six-year jail term despite an outcry from critics worried it will be used to stifle dissent before elections.

The law targets foreign as well as local media, and is seen in part as an effort to silence criticism of the scandal surrounding sovereign wealth fund 1MDB that has rocked the administration of Prime Minister Najib Razak. The election is expected within weeks and Mr. Najib is battling to win a third term in office.

After a debate spanning much of Monday and last week on Thursday afternoon, Parliament — which is dominated by the ruling Barisan Nasional (BN) coalition — voted in favour of the new law. The law originally proposed a maximum prison sentence of 10 years and fine of 5,00,000 ringgit ($1,30,000) for publishing what authorities deem to be fake news, but the government lowered the jail term to six years following a storm of criticism.

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Centre tightens grip on fake news

The Information and Broadcasting Ministry, headed by Union Minister Smriti Irani, on Monday amended the guidelines for accreditation of journalists.

Accreditation of a journalist (both television and print) can be cancelled/annulled if news reported by him/her is found to be “fake”. “Noticing the increasing instances of fake news in various media, including print and electronic media, the government has amended the guidelines for accreditation of journalists,” a press note from the Ministry said.

Complaints of “fake news” will be referred to the Press Council of India if it pertains to print media and to the News Broadcasters Association if it relates to electronic media. They will have to dispose of each complaint within 15 days. During the probe, the journalist’s accreditation will be suspended.

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Cauvery again

It is unfortunate that the Cauvery dispute is once again before the Supreme Court, barely weeks after the final verdict. The Centre is to blame for the dispute going into another round of litigation. While Tamil Nadu has moved the court to initiate contempt proceedings against the Centre for not complying with the direction to frame a scheme to implement the water-sharing arrangement set out in the February 16 judgment, the Centre has sought three more months and some clarifications in the court order. It is difficult to believe the issue at hand is so perplexing that the Centre had no option but to come back to the court. It appears that it does not want to handle the issue until the Karnataka Assembly elections get over in mid-May. Political and electoral considerations appear to have dictated the Centre's action. It is almost as if it believes that as long as the option of buying further time is available, it need not fulfil its legal obligations. It is unfortunate that just before the expiry of the court's six-week deadline, the Centre came up with a petition asking the court to clarify whether the proposed scheme should be the same as that which the Tribunal had set out in its final award in 2007, or could be at variance with it.

Supreme Court will ensure Tamil Nadu's share of Cauvery water, CJI assures State

It is true that there is a divergence of opinion between Tamil Nadu and Karnataka on the proposed mechanism and its composition. While Tamil Nadu wants the 'scheme' envisaged by the court to mean nothing other than the Cauvery Management Board and the Cauvery Water Regulation Committee, mentioned in the Tribunal's final award, Karnataka says there is no reference to a 'board' in the apex court's order, and that the Centre could frame a scheme different from that described by the Tribunal. It contends that the apex court envisaged a 'dispute resolution body', and not the 'management board' favoured by the Tribunal. Against this backdrop, the Centre could have exercised discretion and come up with a scheme that would include an inter-State body to oversee the water-sharing. At the latest hearing, the Chief Justice of India, Dipak Misra, observed that the term 'scheme' mentioned in the judgment did not refer to only a 'board'. He also assured Tamil Nadu that the court would ensure that it was not deprived of its share of Cauvery water. It is an indication that it is not the nomenclature but the nature of the relief that matters. It will be wise for all parties to remember that disputes are better resolved on the basis of equity and not prolonged on expedient considerations. The Centre's actions should not amount to undermining the finality of the highest court's judgment, and should be unwaveringly in aid of its implementation.

The revival of the Trans-Pacific Partnership, sans U.S., must buttress the free trade debate

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Federalism and fairness

Federalism is once again the focus of political discourse in India. Karnataka Chief Minister Siddaramaiah set the cat among the pigeons when he highlighted Kannada pride by unveiling an official state flag last month. Then in a Facebook post on “Regional Identity & Federalism”, he advocated the need for States to have both financial and cultural autonomy.

Karnataka flag unveiled

Since quitting the National Democratic Alliance, Andhra Pradesh Chief Minister Chandrababu Naidu has also been vocal in criticising the Central government for taxing the southern States to spend on the northern States.

And also in March, the Dravida Munnetra Kazhagam’s working president M.K. Stalin wrote to Prime Minister Narendra Modi and the Chief Ministers of 10 non-Bharatiya Janata Party-ruled States expressing concern over the terms of reference for the 15th Finance Commission. The Centre’s direction to use the 2011 Census instead of the 1971 Census for population data has riled the south. As the population in these States has stabilised, the concern is that their share of tax allocation would reduce.

While “federalism” has become the catch-all term for these concerns, there are principally three distinct yet inter-related strands to the debate — a constitutional claim for autonomy; a demand for fairer distribution of taxes; and an assertion of linguistic and cultural rights.

Constitutional context

In his Facebook post, Mr. Siddaramaiah asserted that while India became a “union of states with a strong center” in 1947, now “from a union of states, we are evolving into a federation of states”. This is indeed a strong claim to make as Article 1 of the Constitution declares India as a “Union of States”. Such phrasing was deliberate. On November 4, 1948, while moving the Draft Constitution in the Constituent Assembly, B.R. Ambedkar responded to the question as to why India is a “Union” and not a “Federation of States”: “The Drafting Committee wanted to make it clear that though India was to be a federation, the federation was not the result of an agreement by the States to join in a federation and that the federation not being the result of an agreement no State has the right to secede from it. The Federation is a Union because it is indestructible.” Hence, political scientist Alfred Stepan classified India as a “holding together” as opposed to a “coming together” federation. Unlike the federal form of government in the United States, which is described as an indestructible union composed of indestructible States, India is an indestructible union of destructible States. The units of Indian federation have undergone multiple transformations since 1947. This is because Article 3 of the Constitution empowers Parliament to create new States. While such a provision can be seen as giving the Union too much power, it has arguably been central to holding India together since it allows the federation to evolve and respond to sub-national aspirations.

Birth pangs of a new federal polity

While its constituent units have changed, the relationship between the Union and the States has remained the same. Hence, from a constitutional perspective, it would not be accurate to say that India is moving from a union to a federation of States. However, after successfully “holding together” as a federation for over 70 years, the larger question is whether there is a need to reconsider the distribution of powers between the Union and the States. While the flexible nature of federalism under the Constitution has served India well, the continued existence of provisions

such as Article 356 (President's rule) goes against the grain of federalism. Any serious political movement around federalism should question the necessity of retaining such constitutional provisions which are vestiges of colonial rule.

A viable federation

Over the last couple of decades there has been a shift in political and economic power from the Centre to the States. While some have felt that this trend would reverse after the formation of a Central government with a simple majority for the first time in 25 years, Prime Minister Narendra Modi has sought to assuage such concerns by invoking the idea of "cooperative federalism". The 14th Finance Commission, in 2015, recommended raising the share of States in the divisible pool of Central taxes from 32% to 42%. However, beyond this measure, the Centre has not inspired much confidence regarding its commitment to federalism.

Southern States to discuss 'bias' in fund devolution

States such as Karnataka have asserted their linguistic and cultural rights in the wake of the Centre's interventions such as a promotion of Hindi. Now, the skewed terms of reference for the 15th Finance Commission have brought the south together in making a strong case for fiscal federalism. The Commission has been using the 1971 Census for population data to ensure that States that have been successful in family planning are not penalised. This came in the wake of the 42nd Amendment to the Constitution which froze the distribution of Lok Sabha seats among States for 25 years, which was extended for another 25 years, in 2001. This prudent political compromise is now being tested.

Federalism is ultimately based on trust between its various constituent units. If a set of States perceive that their progress is being penalised, the viability of such a federation comes into question. While the southern States contribute to the nation economically, they don't occupy a central space politically and are further marginalised culturally. Finally, unless the concerns regarding fairness are addressed from constitutional, financial and cultural fronts, the fault lines developing in our federation could deepen further.

Mathew Idiculla is a research consultant at the Centre for Law and Policy Research, Bengaluru

The India-Japan economic relationship remains underwhelming in relation to strategic ties

END

India cannot afford a North-South divide

The southern states are unhappy with the terms of reference of the 15th Finance Commission, which is to decide the ‘distribution between the Union and the States of the net proceeds of taxes’. The body is mandated to take into account the 2011 census instead of the 1971 census. This, states in the south feel, will result in penalising them for keeping population growth stable — while rewarding the northern states. Their collective discontent on the issue comes at a time when the politics of at least three of the southern states is in a churn. In Karnataka, ahead of the elections, the Congress government has decided to use sub-nationalism — by emphasising the primacy of Kannada and declaring its own flag. In Andhra Pradesh, both regional parties, the TDP and the YSRCP, have taken strong positions against what they claim is the Centre’s betrayal of not granting Special Category Status to the state. In Tamil Nadu, political space has opened up with Jayalalithaa’s death and the entry of newer actors. This is happening in a context when there has been an increasing opposition — articulated both by parties and in social media — to what is seen as an effort by ‘northern parties’ to interfere in state politics and impose linguistic and cultural homogeneity. Take it all together and what you have is a disturbing picture of an emerging fault line between the North and the South.

A unified India is a non-negotiable principle. And that is why it is essential that the central government, state governments, and all parties address the divide instead of exacerbating it. Here is what Delhi needs to do. The Centre must send a message to all five southern states — Tamil Nadu, Andhra Pradesh, Karnataka, Kerala, Telangana — that it will ensure that they do not lose on funds because of progressive policies and better governance. But this is beyond a specific policy technicality. PM Narendra Modi should personally want to reach out to the citizens in the south to reassure them of his firm commitment to diversity.

The BJP in particular needs to do more to convey that it has evolved from being just a North Indian party. At the same time, here is what the southern governments and parties running them must do. The politics of resentment is easy to stoke — but a lot harder to manage. Tough negotiations or differences with the Centre must not be projected as a battle with the centre or north. Resisting and challenging the BJP politically is legitimate for any party, but this must not be accompanied with generating insecurities. India cannot afford a North-South divide.

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Separate freedoms

Last year, before a nine-judge bench of the Supreme Court in *K.S. Puttaswamy v. Union of India*, the Central government posited a frightening thesis. The Constitution, it argued, does not recognise a fundamental right to privacy. One of the main planks of this submission revolved around a notion that privacy was a purely elitist concern, that a liberty of this kind, whenever and wherever it can be promised, will always be overridden by the government's duties in a welfare state. The court, however, decidedly thought otherwise. Indeed, its categorical rejection of the government's arguments was a cause for much celebration. The court showed us, at least in theory, that it was willing to treat every citizen with equal dignity, care and respect, that the inviolability of rights was not conditional on a person's position in society.

"The refrain that the poor need no civil and political rights and are concerned only with economic well-being has been utilised through history to wreak the most egregious violations of human rights," wrote Justice D.Y. Chandrachud in his opinion on behalf of himself and three others. Privacy, he added, could never be a privilege doled out only to a select few. "Every individual in society irrespective of social class or economic status is entitled to the intimacy and autonomy which privacy protects… The pursuit of happiness is founded upon autonomy and dignity. Both are essential attributes of privacy which makes no distinction between the birth marks of individuals." Justice R.F. Nariman, in his separate opinion, was equally dismissive of the government's arguments. There can be no "antipathy whatsoever between the rich and the poor," he wrote, on the existence of a fundamental right to privacy.

In its reach, however, the judgment in *Puttaswamy* went even further. Not only did the judges see a general guarantee of privacy as foundational, and as subject only to the limits on freedom expressly provided by the Constitution's language, but, even more significantly, a clear majority on the bench also placed their faith in a system that saw fundamental rights as unassailable, in a system where an individual will not be waiving her liberties simply by accepting grants and benefits from the government. In other words, the court acknowledged that the state wasn't doing anyone a favour by providing them benefits and subsidies — these were as much an entitlement that sprang from the Constitution as the other freedoms flowing from the document's text.

Now, therefore, we must ask ourselves this: what brought about a volte-face in the Supreme Court's thinking, in its interim order delivered on March 13, in the ongoing battle over the validity of the Aadhaar programme? Here, the court extended the government-mandated deadline on linking Aadhaar to different services, including one's banking and mobile phone accounts, until it delivers a final judgment. But, markedly, it refused to grant a similar extension for notifications made under Section 7 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016. These notifications make a person's entitlement to a host of welfare schemes, including subsidy programmes, conditional on the individual possessing an Aadhaar number. Aren't citizens enrolled to receive benefits from government entitled to the same freedoms as others?

Originally, the state told us that by providing every Indian a unique identity number, by collecting biometric information from us, including our fingerprints and iris scans, the government can ensure an equitable distribution of benefits to the poor. But there were many problems with this vision. For one, it lacked any legislative backing, and was, therefore, clearly introduced without due process. What's more, the state displayed a complete lack of care or concern for a person's right to privacy, in commencing a project which it couldn't have even been sure would satisfy its purported objectives. After all, the government had barely conducted any disinterested study before the

project was piloted to examine its costs and benefits. As a result, several petitions were filed in the Supreme Court, questioning the project's constitutional validity.

However, when these cases came up for hearing before a three-judge bench, in 2015, the government argued that the Aadhaar programme couldn't be questioned, because the Constitution, in any event, didn't guarantee any right to privacy. Faced with this astonishing claim, the court, later that year, referred the cases to a larger bench, to answer what ought to really have been a rudimentary question: does the Constitution recognise a fundamental right to privacy? While making this reference, though, the court also delivered a brief interim order.

The production of an Aadhaar card, it wrote, cannot be made mandatory for obtaining any benefits otherwise due to a citizen. Additionally, Aadhaar could only be used for a specific list of purposes, such as the enforcement of schemes under the Public Distribution System. In October that year, a bench modified this order to include certain other schemes for which Aadhaar could be used, but, at the same time, was careful to clarify that the project was entirely voluntary and that no person could be compelled to enrol in the programme.

In the meantime, in March 2016, even as these petitions were pending before the Supreme Court, the Union government introduced in the Lok Sabha a draft legislation, in the form of a money bill, with a view to legitimising the creation of the Unique Identification Authority of India (UIDAI), which runs the Aadhaar programme. This law, the Aadhaar Act of 2016, describes enrolment with the UIDAI as voluntary. But, in Section 7, it authorises both the Central and State governments to make Aadhaar mandatory for anyone wishing to receive a subsidy, benefit or service, for which expenses are borne from the Consolidated Fund of India. Although this clause, at the same time, demands that the government must accept alternate proofs of identity from persons without an Aadhaar number, since the law's enactment the state has notified more than 130 schemes in which beneficiaries of different welfare measures have been mandated to enrol with the UIDAI. These programmes include schemes that affect access to the public distribution system, to mid-day meals for children, to pensions for the elderly, to public health care, to food subsidies under the National Food Security Act, to maternity benefits, and to an array of other such necessities.

Simultaneously, the government has also made a series of declarations under various different laws, directing individuals to secure an Aadhaar card and to link this number with their income tax PAN, bank accounts, financial services such as mutual and provident funds, and insurance policies, among others. Now, although the deadline for seeding Aadhaar with these services expires on March 31, much like the deadline for linking Aadhaar for the purposes of the schemes notified under Section 7, the benefit of the Supreme Court's interim order, delivered last week, will enure only to the former.

The consequences of this classification are enormous. It creates a fait accompli on Aadhaar for economically and socially deprived persons alone. Every day stories abound on denial to individuals of one benefit or another — access to rations, to food, to health care and to pensions — because of a failure in biometric authentication. Given the substantial concerns raised over the efficacy of Aadhaar-based biometric authentication, why, we might be tempted to ask, did the court separately rank notifications under Section 7?

Does the court's order tell us that rights are not sacrosanct; that individuals seeking benefits from the state exist purely at the government's mercy? Is the court reneging on the glorious promises it made last year? Regrettably, the order offers no explanation. Indeed, there can be no rationale for this classification. The court has every power to now amend its interim order. Unless it does so, the social contract, undergirding the Constitution, faces the grave threat of being reduced to rubble.

Suhrith Parthasarathy is an advocate practising at the Madras High Court

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Journalists launch drive to fight fake news

Reporters Without Borders (RSF) and leading broadcasters launched a drive against fake news on Tuesday with a new set of trust and transparency standards for journalists. The Journalism Trust Initiative (JTI), which hopes to be able to certify outlets and news sources with high standards of ethical norms and independence, is being backed by Agence-France Presse, the European Broadcasting Union (EBU) and the Global Editors Network.

RSF head Christophe Deloire said the idea was that search engines and social media platforms would give preferential treatment in their algorithms to media outlets that met the standards. He hopes that it will lead to the setting up of a “trusted media label” in a world increasingly assaulted by fake news.

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Press Council chief for curbs on ‘fake news’

Justice C.K. Prasad

Though the Information and Broadcasting Ministry on Tuesday withdrew its order under which a journalist’s accreditation could be cancelled if found guilty of spreading “fake news”, the Chairman of the Press Council of India (PCI), Justice C.K. Prasad, endorsed the Ministry’s measures.

Justice Prasad told *The Hindu* , “Is there fake news or not? If the answer is ‘yes’, why should anybody support spread of fake news? And if the government takes steps to remedy this wrong, what is incorrect about it.”

The now-withdrawn order had given the PCI and the National Broadcasters Association (NBA) the responsibility of adjudicating on complaints of “fake news”.

Curbs on portals

While Justice Prasad did not say if the PCI was specifically “consulted” on the order, he said he had had discussions on “media ethics” with Union Information and Broadcasting Minister Smriti Irani and Secretary, I&B, N.K. Sinha.

Pointing out that the I&B order would only have affected accredited journalists, Justice Prasad said various news portals were not covered by the government’s accreditation policy. He said the PCI had recommended a few months ago that news portals be regulated.

Reacting to questions on provisions to control “fake news” in news portals on Monday night, Ms. Irani tweeted that they too would be regulated through other departments of the Ministry. “Will put information in public domain soon,” she said.

Justice Prasad said that even if the order had not been withdrawn, the PCI would not have lent a hand to gag the Press.

Annie Joseph, Secretary-General of the NBA, refused to answer questions on whether the Ministry had consulted it. The organisation issued a brief statement welcoming the decision of the Prime Minister’s Office to withdraw the new guidelines. “NBA also welcomes the decision to let industry bodies that is NBA and the Press Council of India (PCI) decide all issues relating to ‘fake news’,” it said.

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Quoting Mahatma, Vice President Shri Venkaiah Naidu says 'no place for violence in legislatures'
Vice President's Secretariat

Quoting Mahatma, Vice President Shri Venkaiah Naidu says 'no place for violence in legislatures'

Under Swaraj, no one to be blamed for poor governance but ourselves;

Asserts that change must begin with Parliament for radical change in governance;

Vice President and union ministers urge States to shed reluctance in empowering local governments;

PR Minister Shri Tomar calls for adequate manpower for panchayats for better use of increased fund flow;

HUA Minister Shri Puri says poor resource base of cities frustrating and affecting new urban missions

Inaugurates first National Consultation on Strengthening of Local Self Government

Posted On: 18 MAR 2018 8:37PM by PIB Delhi

Vice President of India, Shri M.Venkaiah Naidu and union ministers dealing with rural and urban development today voiced serious concern over less than the desired progress towards empowerment of rural and urban local bodies even after 25 years of legislation by Parliament and urged the States to shed their reluctance in strengthening local governments.

Addressing the first National Consultation Conference on “Swaraj to Suraj: Taking Forward the Governance Agenda’’ in Hyderabad today, these lead speakers stressed on the importance of effective local governance for better implementation on development and welfare initiatives and for better service delivery. The theme of the first of the six conferences being organized by the Indian Institute of Public Administration (IIPA) was ‘’Strengthening of Local Governments” on the occasion of 25 years of 73rd and 74th Constitution Amendments since their enactment by the Parliament. Shri Naidu is the President of IIPA.

Referring to the daunting problems of poor service delivery encompassing primary health, primary and secondary education, drinking water and sanitation, rural roads, electricity, housing, rising

economic inequalities etc., even after 70 years of ‘Swaraj’, Shri Naidu called for a radical change in governance for which Parliament shall take the lead. He said “It is time to harness all the powers we have within our system. It is time for honest introspection. It is time for turning a new leaf. It is time for a radical change in governance. And that change must begin with Parliament, the State Legislatures and the Local Bodies, the crucibles of democracy”.

Expressing his anguish over the events in Parliament and State Legislatures, Shri Venkaiah Naidu, quoting Mahatma said there is no place for violence in legislatures. He said “Let us recall Gandhiji’s wise words: No perfect democracy is possible without perfect nonviolence at the back of it. So, let us abjure violent emotions, violent speech and violent actions. Let us discuss, debate and decide in a dignified manner”. He urged the legislators to argue with the force of logic and conviction rather than stall the proceedings through brute force.

Stating that he was disturbed the trends of unruly behavior and unparliamentary language in the legislatures, Shri Naidu stressed “We should move away from the current environment of settling scores in which each party adopts the strategy of ‘I disrupt because you have done it before. Can we end this spiral? I think we can and we should. Let us make a new beginning”.

Reminding the MPs and MLAs of their responsibility of ensuring the accountability of the executive which includes good governance, Shri Naidu said that colonial rulers were used to be blamed for everything going wrong then, there is no such excuse under own rule i.e Swaraj, except blaming ourselves for such things and Parliament needs to emerge as a role model by setting high standards of performance and ensuring good governance.

Dwelling on the issues of local governance, Shri Naidu who is a former Minister of both rural and urban development, urged the local leadership to have political will to mobilise the much required resources by raising taxes and levies by ensuring delivery of quality services. He stressed that 3Ds – Decentralisation, Devolution and Development go hand-in-hand for the prosperity of rural and urban areas and urged the States to ensure transfer of 3 Fs -Functions, Functionaries and Funds to local governments.

The Vice President said that during freedom struggle, some of our revolutionary freedom fighters attempted to throw bombs in legislature to highlight the exploitation by colonial rulers and today, in our own Raj, elected representatives are throwing mikes at the Chair. We fought for and got Swaraj and we fought for Swaraj so that we can move towards Suraj, he added.

Shri Naidu expressed his anguish over creating din, disrupting proceeding, shouting at each other, shouting down others, rushing into well of the legislatures, throwing mikes at the Chair, displaying placards and banners and said that these are a clear demonstration of intolerance to others' point of view and amounts to negation of the spirit of Parliamentary democracy. He further said that Legislative forums are meant for articulation of different points of view for finding negotiated solutions to the problems of the people, the State and the country. He said that in his considered view, resorting to disruption of proceedings in nothing lies than 'HIMSA' or 'VIOLENCE'. Are we true to Bapuji who gave us Swaraj, he questioned.

Stating that negative thinking, harsh words, harsh deeds - all of these amount to Himsa or Violence, Shri Venkaih Naidu questioned how can we afford such negative thinking, harsh words and deeds in our own Legislatures? Legislatures have the responsibility of ensuring the accountability of governments at various levels, he added.

The Vice President said that how can the elected representatives make governments do their job, if they don't do their job properly? He further said that ensuring Suraj under Swaraj, the real change has to happen in the functioning of our MPs and MLAs and Assemblies, Councils and the

Parliament. He said that he had been the Minister in the Centre for both rural and urban development.

The Vice President said that rural and urban local bodies are far from becoming really the institutions of Self Government that was intended under 73rd and 74th Constitution Amendment Acts, made 25 years ago. He further said that even after 25 years, the national capital Delhi still does not have a Metropolitan Planning Committee. Why this neglected, he questioned. He further explained that own resources of our Urban local bodies amounts to only 0.50% of our GDP, while it is as high as 6% to 14% in countries like Germany, Spain, Australia, UK and the USA. We are now independent for over 70 years, but we are suffering from serious Governance deficit remitting and particularly, disseminating against poor, he added.

The Vice President opined that to build a new India from the bottom, the only way is to make local governments empowered, effective and functional. I hope today's Consultative Table will throw new light in this regard, he added.

The Union Minister of Rural Development and Panchayat Raj Shri Narendra Singh Tomar said self reliant and effective local governments are critical for building a New India and referred to the good work being done by village panchayats in making rural areas Open Defecation Free. He stated that Rs.2,00,292 cr are being transferred to villages during 2015-20 as against only Rs. 60,000 cr in the previous five years, Shri Tomar urged the State Governments to ensue adequate administrative staff for village panchayats for effective utilization of these rising funds. He also called for improved accounting and reporting systems at village level for better monitoring of use of funds.

The Minister of Housing and Urban Affairs Shri Hardeep S Puri while referring to poor resource base of urban local bodies noted that “devolution of finances to urban local bodies makes a frustrating experience and this is adversely impacting the implementation of new urban missions. Over the years, there has been a steady encroachment on the assigned functions and revenues of local bodies by specialized agencies of the State Governments. This resulted in weak non-performing and ineffective local bodies adversely impacting implementation of new urban missions. Concerted efforts are now being made to shore up their capacities. The need of the hour is financially viable urban local bodies”.

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AKT/BK

Read this release in: Tamil

END

Industry / Commerce / Finance

The Chit Funds (Amendment) Bill, 2018

- The Chit Fund (Amendment) Bill, 2018 was introduced in Lok Sabha on March 12, 2018. The Bill seeks to amend the Chit Funds Act, 1982. The 1982 Act regulates chit funds, and prohibits a fund from being created without the prior sanction of the state government. Under a chit fund, people agree to pay a certain amount from time to time into a fund. Periodically, one of the subscribers is chosen by drawing a chit to receive the prize amount from the fund.
- **Fraternity fund:** The Act specifies various names which may be used to refer to a chit fund. These include chit, chit fund, and kuri. The Bill inserts 'fraternity fund' to this list.
- **Presence of subscribers through video-conferencing:** The Act specifies that a chit will be drawn in the presence of at least two subscribers. The Bill seeks to allow these subscribers to join via video-conferencing.
- **Foreman's commission:** Under the Act, the 'foreman' is responsible for managing the chit fund. He is entitled to a maximum commission of 5% of the chit amount. The Bill seeks to increase the commission to 7%.
- **Application of the Act:** Currently, the Act does not apply to: (i) any chit started before it was enacted, and (ii) any chit (or multiple chits being managed by the same foreman) where the amount is less than Rs 100. The Bill removes the limit of Rs 100, and allows the state governments to specify the base amount over which the provisions of the Act will apply.

Current Status: Pending

Ministry: Finance and Corporate Affairs

Stage	Date
Introduction	Mar 12, 2018
Com. Ref.	
Com. Rep.	
Lok Sabha	Introduced
Rajya Sabha	

Relevant Links

Bill Text (26 KB)

_ (275 KB)

PRS Bill Summary (654 KB)

_ (606 KB)

END

Ministry of Women and Child Development

Intensive training programme for Elected Women Representatives(EWRs) of Panchayats

18,578 EWRs from 406 districts of 14 States/UTs trained so far

Training aims to develop EWRs as “change agents”

Posted On: 04 APR 2018 6:00PM by PIB Delhi

Ministry of Women & Child Development is implementing a project on “Capacity Building Programme for Elected Women Representatives (EWRs) of Panchayati Raj”. The project is being implemented by National Institute of Public Cooperation and Child Development (NIPCCD), an autonomous body functioning under the aegis of the Ministry of Women and Child Development, Government of India.

The training of EWRs is being done through a two tier training programme. In the first phase, an intensive training program for EWRs of Panchayati Raj Institutions and Resource persons/Master Trainers was organized on 27th November, 2017. The training in second phase is being imparted through these Master trainers. As of now, 424 Master trainers have been able to impart training to 18,578 EWRs from 406 districts of 14 States/UTs. This programme would go a long way in realizing the Prime Minister’s vision of moving the country from “women development to ***women-led development***”.

The Minister of Women & Child Development, Smt Maneka Sanjay Gandhi started this project realizing the fact that role of EWRs remained ineffective, despite their large presence in the directly elected local governance. It is working on developing EWRs as “change agents”, while improving their leadership qualities and management skills for better implementation of various programmes of the Government. General trainings being organized in the country for Elected Representatives do not focus on the gender component in details and also fall short on the needs of these women representatives to address the specific challenges faced by them at the grassroots level. There are more than 14 lakh EWRs across the country.

Ministry of Women & Child Development has also developed training modules regarding laws for protection of women and children, development schemes and programmes (State and Center), Information Communication Technology (ICT) for the EWRs, participatory planning and asset creation, monitoring of Public Works and leadership qualities. This targeted approach to build capacities of these grassroots leaders has been envisaged to yield more desired development outcomes. It will help to empower the women members and heads of panchayats so that they can govern the villages more effectively.

AKR/NG/SKK

(Release ID: 1527676) Visitor Counter : 315

Read this release in: Marathi , Tamil

END

Cabinet approves rightsizing the Competition Commission of India

Posted On: 04 APR 2018 7:20PM by PIB Delhi

The Union Cabinet chaired by Prime Minister Shri Narendra Modi has given its approval for rightsizing the Competition Commission of India (CCI) from One Chairperson and Six Members (totalling seven) to One Chairperson and Three Members (totalling four) by not filling the existing vacancies of two Members and one more additional vacancy, which is expected in September, 2018 when one of the present incumbents will complete his term.

Benefits:

The proposal is expected to result in reduction of three Posts of Members of the Commission in pursuance of the Governments objective of "Minimum Government - Maximum Governance".

As part of the Governments objective of easing the mergers and amalgamation process in the country, the Ministry had revised *de minimis* levels in 2017, which have been made applicable for all forms of combinations and the methodology for computing assets and turnover of the target involved in such combinations, has been spelt out. This has led to reduction in the notices that enterprises are mandated to submit to the Commission, while entering into combinations, thereby reducing the load on the Commission.

The faster turnaround in hearings is expected to result in speedier approvals, thereby stimulating the business processes of corporates and resulting in greater employment opportunities in the country.

The proposal is expected to result in reduction of three Posts of Members of the Commission in pursuance of the Governments objective of "Minimum Government - Maximum Governance".

Background:

Section 8(1) of the Competition Act, 2002 (the Act) provides that the Commission shall consist of a Chairperson and not less than two and not more than six Members. Presently, the Chairperson and four Members are in position.

An initial limit of one Chairperson and not more than ten Members was provided in the Act, keeping in view the requirement of creating a Principal Bench, other Additional Bench or Mergers Bench, comprising at least two Members each, in places as notified by the Central Government. In the Competition (Amendment) Act, 2007 (39 of 2007), Section 22 of the Act was amended removing the provision for creation of Benches. In the same Amendment Act, while the Competition Appellate Tribunal comprising one Chairperson and two Members was created, the size of the Commission itself was not commensurately reduced and was kept at one Chairperson and not less than two but not more than six Members.

The Commission has been functioning as a collegium right from its inception. In several major jurisdictions such as in Japan, USA and U.K. Competition Authorities are of a similar size.

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AKT/VBA

Read this release in: Marathi , Gujarati , Tamil

END

Cabinet approves revised cost estimates of the scheme of updation of National Register of Citizens, 1951 in Assam

Cabinet Committee on Economic Affairs (CCEA)

Cabinet approves revised cost estimates of the scheme of updation of National Register of Citizens, 1951 in Assam

Posted On: 04 APR 2018 7:22PM by PIB Delhi

The Cabinet Committee on Economic Affairs, chaired by Prime Minister Shri Narendra Modi has approved the Revised Cost Estimates (RCE) of the scheme of Updation of National Register of Citizens (NRC), 1951 in Assam at a cost of Rs. 1220.93 crore upto 31.12.2018.

The scheme of NRC, 1951 is specific to state of Assam covering about 3.29 crore applicants.

Benefits:

The exercise will help in preparation of National Register of Citizens in Assam. 31st December, 2018 is the proposed date for publication final NRC. A part Draft National Register of Citizens (NRC), Assam covering 1.90 crore persons out of 3.29 crore applicants has been published on 31st December, 2017 including names of those applicants in respect of whom the entire process of verification has been completed.

The verification of remaining applicants isat various stages of scrutiny and the complete draft NRC will be published by 30.06.2018, whereafter claims and objections will be received and disposed off leading to the publication of the final NRC.

Details:

•The NRC Assam is being updated as per the provisions of the Citizenship Act, 1955 and the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003. It will include persons whose names appear in any of the electoral rolls upto the midnight of 24th March, 1971 or National Register of Citizens, 1951 and their descendants.

•3.29 crore persons have applied alongwith 6.63 crore documents in 2015 for inclusion of their names in NRC. Thereafter extensive field and document verification has been done in respect of each applicant.

Implementation strategy and targets:

•The actual implementation of NRC update is done by the Statutory Authorities i.e.Local Registrars and District Magistrates appointed by the State Government. A senior official of the State Government functions as State Coordinator and coordinates with the RGI/Government of India in regard to various activities.

•The NRC update work is done under the supervision and control of the Registrar General of Citizen Registration (RGI). The administrative and operational matters are

handled by the State Government as per their extant rules.

Major impact:

The preparation of NRC is the most extensive citizen engaging exercise, which touches the life of every resident of Assam. It is part of the action for the fulfilment of Assam Accord and understanding arrived in a tripartite meeting held in 2005 at the level of Prime Minister. The National Register of Citizens, Assam will contain the names of genuine Indian citizens and will help the government to check illegal immigration in India.

Background:

The NRC Assam, the Register containing names of Indian Citizens in Assam, was prepared in 1951 as a non-statutory process by recording particulars of all the persons enumerated during 1951 Census. The Assam agitation (1979-85) against the illegal foreigners led to the signing of Assam Accord on 15th August 1985 between the Central Government, State Government, All India Students' Union (AASU) and All Assam GanSangramParishad (AAGSP), which stipulated 24th March, 1971 as the cut-off date for identification and deportation of illegal migrants from East Pakistan (Bangladesh). Accordingly, the Citizenship Act, 1955 was amended by inserting section 6A as special provisions for Assam.

In a tripartite meeting of the Central Government, State Government and AASU chaired by the Hon'ble Prime Minister in May, 2005, it was agreed to update NRC, 1951. The modalities were approved by the Government of India in consultation with the Government of Assam.

In pursuance of the Supreme Court's direction, the exercise of NRC update in Assam commenced in December 2013 to be completed over a period of three years. The Supreme Court is continuously monitoring the progress of NRC update and has given various directions from time to time.

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AKT/VBA

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END

Cabinet

Cabinet approves the Protection of Human Rights (Amendments) Bill, 2018

Posted On: 04 APR 2018 7:18PM by PIB Delhi

The Union Cabinet chaired by Prime Minister Shri Narendra Modi has given its approval to the Protection of Human Rights (Amendments) Bill, 2018 for better protection and promotion of human rights in the country.

Salient Features:

1. It proposes to include “National Commission for Protection of Child Rights” as deemed Member of the Commission;
2. It proposes to add a woman Member in the composition of the Commission;
3. It proposes to enlarge the scope of eligibility and scope of selection of Chairperson, National Human Rights Commission as well as the State Human Rights Commission; and
4. It proposes to incorporate a mechanism to look after the cases of human rights violation in the Union Territories.
5. It proposes to amend the term of office of Chairperson and Members of National Human Rights Commission and State Human Rights Commission to make it in consonance with the terms of Chairperson and Members of other Commissions.

Benefits:

The Amendment will strengthen the Human Rights Institutions of India further for effective discharge of their mandates, roles and responsibilities. Moreover, the amended Act will be in perfect sync with the agreed global standards and benchmarks towards ensuring the rights relating to life, liberty, equality and dignity of the individual in the country.

Background:

The amendment to the Protection of Human Rights Act, 1993 will make National Human Rights Commission (NHRC) and State Human Rights Commission (SHRC) more compliant with the Paris Principle concerning its autonomy, independence, pluralism and wide-ranging functions in order to effectively protect and promote human rights.

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Confidence in the House

Indian Parliament. File Photo. | Photo Credit: Shanker Chakravarty

Think of the day in 1997 when Prime Minister H.D. Deve Gowda had to face a no-confidence motion in the Lok Sabha. Now imagine the following situation. Some MPs from one of the numerous parties disrupt the proceedings by storming the well of the House and showing placards. The Speaker expresses that he is unable to conduct the House and adjourns for the day. Repeat this for several days. The Prime Minister continues to hold his office. Would this be a legitimate government?

This is not a mere academic question. About three weeks ago, several members of Lok Sabha gave written notices to the Speaker for a no-confidence motion against the current council of ministers. The rules of procedure require the Speaker to verify whether 50 Members of Parliament support the motion by asking them to stand at their seats and taking a count. Since March 16, the Speaker has every day expressed her inability to count the members supporting the motion as some members were shouting slogans and showing placards in the well of the House.

A primary function

The primary role of the Lower House of Parliament is to determine who forms the government. The Prime Minister and the Council of Ministers can hold office only as long as they have the confidence of the Lok Sabha. While defending the parliamentary system over a presidential system, B.R. Ambedkar had stressed that the former provided accountability on a daily basis, which was desirable for India. Of course, his assumption was that such accountability would be ensured through parliamentary processes such as questions, adjournment motions and as a final measure, the no-confidence motion. Our Parliament has belied this expectation.

Sheen around Modi has faded... Rahul’s remarks are immature, says Deve Gowda

Parliamentary processes recognise the primacy of the no-confidence motion. After all, most other parliamentary work is either designed to have the government answer on its policies and actions, or to debate government bills or sanction its budgetary proposals. These activities cannot be undertaken when the very legitimacy of the government is being questioned. Thus, if there are any notices for the no-confidence motion, the Speaker has to verify whether there are at least 50 MPs who support its introduction, and then fix a time for discussing it. It is this process that has been stalled.

What can the Speaker do if some MPs are not allowing the House to function? The Constitution and the Rules of Procedure in Lok Sabha do not give her the discretion to decide whether to allow the motion. She is duty bound to verify whether there are 50 members in the House who support its introduction. In case of disruptive behaviour by some MPs, she has the powers — and the responsibility — to bring order to the House. She can ask these MPs to return to their seats, failing which they can be named and asked to withdraw from the House. If they don’t, they can be forcibly removed. There are a number of occasions when MPs have been suspended. Indeed, during the term of the current Lok Sabha, 25 members were suspended in August 2015 for not allowing the House to function.

Stalemate on in Parliament

This is not the first time that such a situation has arisen. During the winter session of 2013, several members had given notice for a no-confidence motion. This was during the agitation for creating

Telangana, and several members disrupted the House. For several days, the Speaker adjourned the House, and the motion was never introduced. However, in the midst of the ruckus, the Bill to reorganise Andhra Pradesh into two States was passed.

The present Speaker should not follow her predecessor's path. After all, an incorrect step should not form a legitimate precedent. Her duty is to put the motion to test immediately. Otherwise, the very existence of the government (as well as that of Parliament as a body representing the will of the people) is under question.

A long tradition

Till now, there have been 26 no-confidence motions. Many of these were symbolic in nature, such as the first one against Jawaharlal Nehru in 1963, three against Lal Bahadur Shastri and two against Indira Gandhi in the next three years. Of these 25 were unsuccessful, and one did not get to the voting stage as Morarji Desai resigned. On all these occasions, the no-confidence motion was given priority over all other business. It is this tradition that the Speaker must follow.

Jairam wants MPs stalling Parliament to be expelled

Given the membership of the Lok Sabha, it is evident that this government enjoys a comfortable majority. That said, this position still needs to be tested if questioned. Parliamentary democracy works because there is a broadly held belief in the fair and just exercise of power by the state. The inability of Parliament to function and to test the support for the government undermines the very basis of our democratic structure. The Speaker has the responsibility of ensuring that the House functions and taking whatever steps are necessary — including suspension of members, if needed – to ensure order and check whether there is requisite support to admit the debate on the no-confidence motion.

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

END

‘EC backs one seat, one candidate policy’

Supreme Court has posted the case for hearing in July.

The Supreme Court on Wednesday asked the Centre to respond to an affidavit filed by the Election Commission (EC) of India to amend the law to prevent candidates contesting from multiple constituencies.

A Bench led by Chief Justice of India Dipak Misra was hearing a petition filed by advocate Ashwini Upadhyay seeking a declaration striking down Section 33(7) of the Representation of the People Act of 1951, which allows candidates to contest from two constituencies at a time, as invalid and unconstitutional.

Mr. Upadhyay has asked the court to direct the Centre and the Election Commission to “discourage” independent candidates from contesting parliamentary and State Assembly elections.

The EC informed the court that it had proposed the amendment of Section 33(7) way back in July 2004. It was one of the 22 “urgent electoral reforms” the EC had suggested to a Rajya Sabha Parliamentary Standing Committee. It had pointed out that there had been cases of a person contesting from two constituencies and winning from both. “The consequence is that a by-election would be required from one constituency, involving avoidable labour and expenditure...”

The EC concluded that the “law should be amended to provide that a person cannot contest from more than one constituency at a time.”

EC suggestion

It suggested that a candidate should deposit Rs. 5 lakh for contesting in two constituencies in an Assembly election or Rs. 10 lakh in a general election. This would be used for the conduct of a by-election in the eventuality that he or she had to relinquish seat. The court posted the case for hearing in July.

END

Muddying waters

Delivering its verdict on the Cauvery water dispute on February 16, the Supreme Court (SC) had asked Tamil Nadu, Karnataka, Kerala and Puducherry, the states contending for the river's waters, to shun their parochial outlook. It had called for a basin-centred approach to the imbroglio. But six weeks after the verdict, the matter is back at the apex court with the parties to the dispute at loggerheads over the mechanism to administer the court's award.

Given that the Cauvery dispute stretches back to more than a century and involves layers of complications, it is understandable that the two riparian states differ over the resolution mechanism. However, what is unfortunate is that the disagreements have taken an emotive hue in Tamil Nadu and poll-bound Karnataka. This is against the spirit of the apex court's verdict.

In February, the SC modified the 2007 verdict of the Cauvery Water Disputes Tribunal (CWDT) — an agency it had constituted in 1990 — and increased Karnataka's share of Cauvery waters at the cost of Tamil Nadu. The Court asked the Centre to formulate a "scheme" within six weeks so that its award "is smoothly made functional".

But what has complicated matters is that this mechanism is different from the one enunciated by the CWDT. The Tribunal recommended that a Cauvery Management Board "be entrusted with the function of supervision of reservoirs and the regulation of water releases from the Cauvery".

This is not a mere difference in nomenclature. "Scheme" is the terminology used in the Inter State River Disputes Act, 1956 and, according to the Karnataka government, what the Court means by it is "a dispute resolution body", very distinct from the regulatory agency mandated by the CWDT. Karnataka also contends that the SC has "left the contents of the scheme to the discretion of the Centre". Tamil Nadu disputes this interpretation arguing the "scheme" should be as per the recommendations of the CWDT.

With elections to the Karnataka assembly a little more than a month away, the Centre has played it safe. It has asked the SC, "if it is open to the Central government framing the scheme in variance with the recommendations contained in the CWDT report". The Tamil Nadu government has also approached the Court contending that the Centre's delay in giving effect to the February verdict constitutes a "contempt of court".

The state government is well within its rights to approach the SC. But what is unacceptable is that both the ruling AIADMK and the opposition DMK are competing with each other to raise tempers over what is an emotive issue in the state. On Tuesday, the AIADMK called a strike with Chief Minister E K Palaniswami and his deputy O Panneerselvam participating in the protests. The SC will hear the matter on April 9. The parties will do well to hold their horses — at least till then.

END

The centre’s failure to steer agriculture right

Watching the pace at which events succeed each other in India is like witnessing a croupier dealing out cards at a casino: Each card is topped by another in the blink of an eye just as new events rapidly push aside older ones. The Union budget seems to be an age ago, although we must remind ourselves that Parliament has only just passed it. Commentary on the budget in the media has already faded, crowded out by constant chatter on the elections in three North-Eastern states, Canadian Prime Minister Justin Trudeau’s passage across India, involving many costume changes, the latest gross domestic product numbers, etc. It is thus an appropriate moment to return to the prosaic subject of the budget and briefly examine its treatment of agriculture.

Three things stand out as the headline readouts.

Like its many previous avatars stretching back almost two decades, this budget too lacks an overarching direction in which the central government wants to steer agriculture. At least in the case of industry or services, there is some link to larger themes and ongoing initiatives: Make In India, goods and services tax (GST) consolidation, affordable housing, health coverage to vulnerable households, Swachh Bharat, etc. But there is no clear vision for agriculture in the budget.

Ongoing schemes in agriculture have acquired the status of railway projects sanctioned over the years: New ones keep getting added but no one can shut down any of the existing ones. This potpourri is hardly a recipe for the transformation so desperately required in the sector. So, a lack of ambition is the biggest disappointment in the budget as far as agriculture is concerned.

Second, the focus, as always, is on outlays, ignoring outcomes. Agriculture credit provisioning, among a plethora of interventions, goes up substantially, while the challenge of connecting millions of small and marginal farmers to institutional finance has remained unaddressed for the last two decades. This is unlikely to unshackle these farmers from the grip of moneylenders, the only avenue available to them to finance cropping operations. With informal sector interest rates starting at 24% (compared to 0-7% from banks and cooperatives), there is likely to be no breakthrough in investments on small farms, where the maximum unutilized productivity potential waits to be tapped.

Third, the thorny but critical issue of agriculture marketing reform has again been sidestepped, perhaps in deference to impending state assembly polls and the parliamentary election next year. Rural marketing hubs will benefit from some infrastructure upgrade, which is welcome. But the real knot to be untied in marketing is rearranging the institutional arrangements under the agriculture produce marketing committee (APMC) legislation. This challenge has been ducked, yet again.

There is an urgent need to introduce competition, transparency and technology-enabled transactions in the 7,000-plus *mandis* in the country. These measures are fiercely resisted by incumbent players, who have managed political cover to support their stance all these decades. Even e-NAM, the electronic trading portal for agricultural commodities launched by Prime Minister Narendra Modi, remains stunted and has failed to provide an alternative and efficient marketing platform to farmers.

To be fair, the political economy of agriculture marketing is complicated and does not lend itself to easy solutions. But marketing reform remains central to the goal of doubling farmer incomes, a vision which the prime minister again committed himself to at a conference held in mid-February, after the budget had been presented.

Farmers, especially in the central, eastern and North-Eastern regions, are not likely to be incentivised to make investments in land improvement, machinery and technology unless the prospects of better prices materialize. This can only happen by treating the entire country as a unified market for agricultural goods, as is the case for industrial products. Supportive policies for allowing direct purchase at the farm gate, portal-based trading, reform of antiquated storage and movement restrictions, and a more liberal external trade stance will be among the other essential components of a marketing reform package.

Almost the entire tenure of the present government has gone by without meaningful reform of the fertilizer subsidy, admittedly a minefield at any point, but hardly one the government would dare to address in its last full budget. Subsidies currently dwarf investments in agriculture by a ratio of 4:1. A great deal of evidence exists on subsidies causing imbalanced use of nitrogenous fertilizers, leading to damage to soil health and other adverse consequences. One would have expected a purposeful beginning of the process of subsidy reform, even if the road map extended several years hence.

Most of these measures are within the power of the Central government, though the states will have to be brought around to play their role. As we saw in the case of the GST roll-out, significant amounts of political capital will have to be invested by the national leadership to achieve a turnaround in the fortunes of agriculture. Budget 2018 makes it apparent that the powers-that-be don’t believe the moment has arrived to make that move yet.

Pravesh Sharma is a former IAS officer who currently leads an agri start-up.

END

‘States to compete on new logistics index’

The government is working on creating a logistics index that would score States on their performance in the sector, Commerce Minister Suresh Prabhu said on Thursday. He added that the sector was one of the key thrust areas for the government.

“A logistics index is being developed for every State so that they can compete in this area,” Mr. Prabhu said, speaking at the Global Logistics Summit organised by industry body FICCI.

“With many ministries dealing with logistics, the need was felt for a nodal, coordinating agency for synergy among its various segments.” “The challenge for us is how to integrate these various modes into one actionable pathway,” he added.

‘Logistics as subject’

“So, the multi-modal transport issue is now being addressed by the new logistics division under the Commerce Ministry. It is the first time that logistics as a subject is being dealt with at the level of the Government of India,” the Minister said.

Mr. Prabhu said that the logistics industry would serve as a key element that would allow entrepreneurship to blossom further in the country.

END

Consent is crucial

Data and data science have suddenly emerged into the spotlight. First, there was a data breach at Facebook, which saw allegations of the U.K.-based Cambridge Analytica (CA) illegally accessing over 87 million users' information for personalisation of digital campaigns. Then there were allegations that the official mobile apps of Prime Minister Narendra Modi and the Congress party had sent user data without consent to foreign companies for analytical purposes.

Data on 'up to 87 million' Facebook users shared with U.K. firm

The rapid rise of data science can be attributed to the voluminous amount of information that is being generated with every activity of ours in this digital age — IBM says that 90% of the world's data has been generated just in the last two years — and the strides concurrently made in the world of mathematical modelling, computation, and Artificial Intelligence-powered algorithms. These trends are creating unprecedented, far-reaching possibilities built on our growing capability to analyse vast quantities of the most complex of data in real time, and helping us get insights that can assist us in taking best-informed decisions across sectors.

Also read

You want my data? Take it!

Data science generally tends to produce win-win scenarios for the practising organisations and their end users. For example, its application in election processes can make it possible for various political parties to understand their voters better, and to reach out to them more effectively. The insights derived after analysing feedback from the electorate can be used while creating manifestos, formulating policies, and selecting candidates — steps that can essentially usher in a more transparent and participatory democracy.

Nevertheless, there are growing fears that applications of data science, along with large social media platforms with hundreds of millions of active users, could unduly subvert our democratic processes, and turn our elections into mere marketing campaigns. However, it should not be forgotten that similar fears in lesser degrees existed across time, while our mass communication technologies evolved from the print, to the radio, and then the television medium. Data-driven social media and digital platforms should be seen as yet another stage in this evolution.

If data is the new oil, how much does an Indian citizen lose?

Facebook and CA find themselves in the dock, not for putting in action any of the applications of data science, but for illegally doing so. While major Indian political parties continue their mud-slinging over the hiring of CA, and oversharing their app data with third party analytical firms based overseas, the more pertinent deliberation should be if any of their activities related to data handling, from collection and storage to sharing and transfer, were done illegally, without the consent of the users. That would be a serious breach of trust, compromising the privacy of citizens. These events also call for the expedited creation of strong data privacy and protection laws, without which our newest fundamental right will remain easily exploitable words on paper.

The writer is the Executive Director of Cyber India, and the Vice President of Navoothan Foundation

Please enter a valid email address.

The India-Japan economic relationship remains underwhelming in relation to strategic ties

END

The ‘fake news’ fiasco

Has Smriti Irani, Union Minister for Textiles and Information and Broadcasting (I&B), become an embarrassment for the government? Her fake news press release is not the first time she’s stumbled on a banana skin. There have been several earlier occasions and each time she’s thrown the skin herself. Let me recount the facts, and then you can decide for yourself.

Journalists to lose accreditation if news is found to be 'fake'

The fake news episode is, of course, the worst. Only infrequently does the Prime Minister’s Office overrule a decision by a senior colleague in less than 24 hours. It’s even more rare for this to be made public. Ms. Irani was not allowed to claim she changed her mind. She was ordered to do so.

Ever since 2104

However, Ms. Irani’s gaffes go all the way back to 2014, beginning with contradictory claims about her Bachelor’s certificate. Eventually, she was moved from the HRD Ministry. By then she was considered “the most controversial Minister in the NDA government”.

But her worst errors have happened in connection with the media. The first happened just weeks after she took over as I&B Minister in July last year. The incident revealed that she not only lacks judgment but needs a better sense of humour.

Smriti Irani 2.0: more wit, less aggression is the way

It happened when the Press Trust of India released a photograph of some people wearing Narendra Modi and Nitish Kumar masks to mark friendship day. It was a harmless picture of an innocuous bit of innocent fun but enough to enrage Irani. “Is this how elected heads will be projected?” she asked PTI on Twitter. “Is this your official stand?”

Clearly, the I&B Minister did not accept a news agency’s right to release a picture it thought the public wanted to see. More significantly, she did not accept politicians could be mocked. Most obvious of all, she felt she could admonish the media without contradicting her government’s commitment to honour free speech.

At the time the Prime Minister did not intervene, and PTI was forced to issue an apology. This may have left Ms. Irani feeling triumphant but it also proved she doesn’t understand what free speech is all about. George Orwell once pointed out that free speech doesn’t mean anything unless someone is offended. And if that person is the Prime Minister or a colleague, they have to accept it as the price of freedom.

Far more serious are her run-ins with Prasar Bharati. I’ll come to the specific issues in a moment’s time, but first consider the tone and tenor of the Prasar Bharati Chairman A. Surya Prakash’s angry comments. And remember, he was appointed by the NDA government. He is not a survivor from the days of its predecessor.

What is the Prasar Bharati Act all about?

“The bureaucrats in the Ministry have passed several orders which indicate that they have utter contempt for the Prasar Bharati Act. In fact, they behave as if the Act does not exist at all,” Mr. Prakash told *The Hindu*. “I regard such orders as gross contempt of the Act and of Parliament itself.”

Perhaps the most serious cause of the problem is the Ministry's order requiring that the Prasar Bharati CEO's appraisal be done by the I&B Secretary and reviewed by the Minister. Mr. Prakash calls this "absolutely and patently illegal". It flouts Section 6(vii) of the Act which stipulates that the CEO is an employee of the Corporation and not the Ministry.

However, the Corporation's differences and discord with the Ministry have several more causes. In February, the Ministry directed Prasar Bharati to terminate all contractual employees. This was a blatant attempt to undermine its autonomy to hire its own staff. It wanted a serving IAS officer appointed as a full-time member of the Corporation's board, ignoring the fact such people should be employees of Prasar Bharati and selected by a committee chaired by the Vice President. It wanted officers of the Indian Information Service, which comes under the Ministry, to work with Doordarshan and AIR news divisions. It wanted 2.92 crore paid to a Mumbai-based private firm for services that could easily have been performed by Prasar Bharati itself. It's even held back release of money allocated by the Finance Ministry, presumably to force acceptance of its orders.

We, therefore, have a clear rift between Prasar Bharati and the Modi government. Mr. Prakash may only talk about "bureaucrats" but they would not act without Ms. Irani's support.

The latest folly

The recent 'fake news' guidelines compounded her folly. The truth is fake news is hard to define and even, at times, to identify. It's also generated by multiple sources and not just journalists. In these circumstances, Ms. Irani's 'cure' was arguably worse than the disease. The attempt to suspend a journalist's accreditation before proof of guilt was liable to be misused. To many it suggested an attempt to muzzle the media in this crucial year before the 2019 elections. Finally, the fact that she made her decision known around the same time that Malaysia is proposing high-handed action against fake news — prior to its own election — only added to doubt and suspicion.

As far as the journalist community is concerned, on this occasion she went one step too far. She has shown she doesn't understand journalism, cannot be relied upon to protect press freedom and, therefore, does not deserve to be I&B Minister.

So, now, what's your answer to the question: has Smriti Irani become an embarrassment? Mine is obvious.

Karan Thapar is a television anchor

The India-Japan economic relationship remains underwhelming in relation to strategic ties

END

have protests erupted again over Cauvery?

What is the agitation for?

Tamil Nadu, which witnessed State-wide protests over the ban on jallikattu in January last year, is again in agitation mode. On Thursday, the Opposition parties, led by the DMK, organised a bandh against the Centre's failure to frame a scheme to implement the Cauvery water-sharing agreement set out in the February 16 judgment. Last Saturday, the AIADMK government moved the Supreme Court to initiate contempt proceedings against the Centre for its "wilful disobedience" in not implementing the verdict.

What is the 'scheme'?

The 'scheme' is required for the implementation of the final order given by the Cauvery Water Disputes Tribunal in February 2007. While Tamil Nadu argues that the 'scheme' should have entailed setting up of the Cauvery Management Board and the Cauvery Water Regulation Committee, Karnataka says there is no mention of a 'board' in the court's order. Even on March 29, when the deadline lapsed, Tamil Nadu hoped against hope that the Centre would come out with a scheme, but that did not happen.

Why does TN want a Board?

The popular understanding is that the board, by itself, would ensure timely water release, as spelt out in the Tribunal's final order. The State's long-standing grouse against Karnataka is that it is not getting its share in right quantum and at the right time. This has been the situation despite the Tribunal's interim and final orders taking care of irrigation requirements.

Certain sections in the State felt aggrieved by the Supreme Court increasing Karnataka's share of water at the cost of Tamil Nadu. The overall share of Karnataka, which has gone up by 14.75 thousand million cubic feet (tmc ft), now stands at 284.75 tmc ft, whereas that of Tamil Nadu is 404.25 tmc ft. It has become handy for the critics of the Centre to allege that this is "yet another instance" of the Union government discriminating against Tamil Nadu. This argument is gaining attention in the absence of forceful articulation of a counter-view by the BJP.

Why did the Centre not oblige?

The Union government, in its clarificatory application filed in the Supreme Court after the deadline lapsed, referred to divergent views expressed by constituents of the Cauvery basin — Tamil Nadu, Karnataka, Kerala and Puducherry — over the judgment. Citing the Assembly elections in Karnataka and describing the Cauvery as a "very emotive issue" in that State, the Centre said the notification of a scheme at this juncture "would lead to massive public outrage, vitiate the election process and cause serious law and order problems." Seeking three more months, it wanted to know whether an implementation mechanism could be a "mixture of administrative and technical body," and could have functions, different from what had been recommended by the Tribunal in the February 2007 order.

Why is Cauvery important for T.N.?

Regarded as the lifeline of Tamil Nadu, the Cauvery is the only major river of the State, unlike Karnataka, the upper-riparian State in the river basin which also gets water from the Krishna and the Godavari.

The Cauvery also accounts for 70% of canal irrigation in Tamil Nadu. As many as 24.71 lakh acres have been recognised as the State's irrigated area under the Cauvery. In terms of paddy-sown area, the delta districts of Thanjavur, Tiruvarur, Nagapattinam and four others, including Tiruchi and Pudukottai, account for nearly 40% of the total area in the State.

In terms of paddy production, they contribute 35% of the total crop. In 2014-15, of the 79.4 lakh tonnes of paddy, the seven districts produced 29.4 lakh tonnes. (Parts of Cuddalore, though considered part of the delta region, are not included here). In the past 10 years, the Cauvery has also become a major source of drinking water for a number of districts, including Ramanathapuram and parts of Madurai and Dindigul in the south and Vellore in the north, apart from central and western districts of the State.

T. Ramakrishnan

END

Out of my mind: Trust the court

The Supreme Court has emerged as the sole guarantor of people's rights. There was Padmaavat where despite the mob rule, the court defended the Right to Freedom of Expression.

In the Hadiya case, the right of an adult Indian woman to choose her own husband was upheld. There has been new thinking on the decriminalisation of homosexuality. There was recently a liberal judgment on voluntary euthanasia.
Such non-political authority cannot go unchallenged in a highly politicised democracy. The recent Bharat Bandh agitation is a political reaction to what was after all a technical judgment. The judgment was meant to protect the fundamental right in any society based on the Rule of Law that everyone is innocent until proved guilty.

That idea is a hallmark of the liberalism which is the foundation of the Constitution. Liberalism presumes a basic equality of rank among all citizens. Yet, the society has no such equality.

India's history since Independence is a continuous struggle to achieve such an equality of rank or dignity for all in a country where the majority community belongs to a social order characterised by a hierarchy of jatis sitting atop the Dalits, who are the lowest of the low.

This distance between the liberal promise and the social reality has been sought to be resolved by the politics of reservations. To achieve equality in our unequal society, the mark of ritual inferiority — jati status — is itself used as a weapon in the hope that eventually this will remove the disadvantages of the hierarchical order. The Rule of Law presumes equality in the hope of achieving it.

It is this contradiction which has finally hit the country. Given the proximity of the general election, every vote bank has an opportunity to push its case. With the Dalits being the largest minority, their clout is formidable. For years, they lived under the false protection of the Congress and got little in return. Kanshi Ram was the genius who created an independent structure for Dalit mobilisation.

Now, the old leadership under Mayawati is losing its grip on popular appeal. New leaders are emerging to take her place. They go nationwide, use social media and mobilise large numbers. Mahatma Gandhi taught us to fight the British by gathering large crowds in confined urban spaces as it always intimidates the forces of law and order. That lesson has never been forgotten by the people fighting for what they want.

But in this case, the exploited minority is urging the retention of a procedure which harms the rights of the suspected offender. This is the severest test of the courts and the Constitution.

The Rule of Law is committed to protect the human rights of everyone — even a terrorist — if they come under suspicion. Many people do not like it but the Rule of Law has to protect the victim as much as the alleged aggressor before punishment can be delivered.

The Dalit vote being essential to electoral victory for every party, the temptation to override the Supreme Court will be great. But it should be resisted. By the Dalits themselves if not anyone else. They must remember that once the Rule of Law is flouted, it is the weak who will suffer the most. The Constitution is the sole protection for the bahujan.

END

EC to take a call on electoral bonds soon

Counting the money:The Election Commission had told a parliamentary committee that the electoral bonds would be a retrograde measure.File photo

The Election Commission will soon take a fresh view of the electoral bonds after analysing the terms of the government notification and the outcome of two rounds of their sales since March.

The Union government notified the scheme on January 2. Under the rule, only registered political parties which have secured not less than 1% of the votes polled in the previous Lok Sabha or Assembly elections are eligible for these bonds.

The first round of sales was allowed in the designated branches of the State Bank of India (SBI) in New Delhi, Mumbai, Kolkata and Chennai from March 1 to 10. The second phase is on from April 2 to 10.

Rs. 222 crore sales

“In the first round, bonds worth Rs. 222 crore were issued by the SBI. This fact was not reported directly to the Election Commission. The government disclosed it in the Lok Sabha in response to the question from an MP, and that was how it came into the public domain,” an official said. It is learnt that Election Commission officials held a meeting on the basis of this information. “Now that the second phase of sales is under way, we will wait for more details for further analysis,” the official said.

The EC Secretariat is also examining the notification to determine whether all the concerns raised by the Election Commission have been addressed. The Election Commission had earlier told a parliamentary committee that the introduction of electoral bonds would be a retrograde measure in the effort to make political funding transparent. It had submitted that the changes made to the election laws for the bonds could compromise transparency.

The amendment to Section 29C of the Representation of the People Act has made it no longer mandatory for the parties to report the details of donations received through the bonds. It is not clear how the details of the bonds will be shared with the Election Commission. However, the issuing bank has their money trails.

END

Broken Houses: on the state of Parliament

With the **two Houses of Parliament** adjourned *sine die* on April 6, the institutional crisis afflicting the legislature has been framed by both statistics and the solutions being offered by the Treasury and Opposition benches. While each side is stacking the blame at the other's doorstep, neither will emerge unscathed; within the heavily polarised, disruption-at-any-cost strategising inside Parliament there is no sign of wiser counsel to reach across the floor and forge a via media. The session began on January 29, the Union Budget was presented on February 1, and the first part concluded on February 9. In the second part of the session, starting March 5, the **productivity of both Houses** was less than 10%. Against a long list of pending Bills, just one was passed by both Houses, the Payment of Gratuity (Amendment) Bill 2017. That was it for the Rajya Sabha. The Lok Sabha passed three other bills related to the Budget: the Finance Bill 2018 and two Appropriation Bills. These are money bills that do not need the Rajya Sabha's nod, and with the National Democratic Alliance's numbers in the Lok Sabha, their passage was never going to be in doubt. But it must be an occasion of shame that the Budget was passed in the Lower House without any debate whatsoever. Other numbers deepen the reading of the crisis: both Houses lost more than 120 hours each to disruptions; and the Rajya Sabha took up just five out of 419 listed starred questions (that is, questions that Ministers answer orally, with MPs allowed to ask supplementary questions).

However, the crisis is defined by more than numbers; it is the quality of interaction that is damaging India's democracy. The Lok Sabha Speaker, most glaringly, failed to use the powers at her command to suspend unruly MPs so that a notice for a no-confidence motion could be considered. Certainly, for all the expedient calculations that guided Opposition parties and the government at different points to have the Houses disrupted, eventually neither benefits. Both come across looking effete — the Opposition for failing to keep the government answerable (especially by failing to use Question Hour), and the government for not mustering the grace and conviction to debate a no-trust motion. Some ruling party MPs proposed that their salaries be docked, as if the crisis is nothing but budgetary. A **special session** before the monsoon session to finish pending business has been mooted. Although this is bound to raise the question why **Parliament was held to ransom** if the Opposition had indeed wanted it to function, it is an idea worth considering seriously by all parties. For one, it provides an opportunity to fix a broken parliamentary calendar and finish unfinished legislative business. For another, even the process of reaching an understanding to hold another session may help in repairing, at least to a degree, the very image of our parliamentarians — who seemed to be unabashed about creating and sustaining an institutional crisis.

The revival of the Trans-Pacific Partnership, sans U.S., must buttress the free trade debate

END

SC to issue orders in roster case

A day after the Supreme Court's number two judge, Justice Jasti Chelameswar, attacked the Chief Justice of India's discretionary powers to constitute Benches and allocate cases, a three-judge Bench led by Chief Justice of India Dipak Misra on Monday decided to pass judicial orders on a petition calling for a transparent and codified procedure for constitution of Benches and allocation of cases in the court.

"Unfettered power is being exercised by the Chief Justices in the matter of formation of Benches, and so, the same is liable to be regulated through specific rules," the petition filed by Asok Pande said.

It said specific provisions should be incorporated in the Supreme Court Rules of 2013 that the three-judge Bench in the Chief Justice of India's court should consist only of the Chief Justice of India and the court's two senior-most judges. That is, in the present scene, Chief Justice Misra and Justices Chelameswar and Ranjan Gogoi.

The petition further demanded that the Constitution Bench of the Supreme Court should consist of five senior-most judges — the CJI, Justices Chelameswar, Gogoi, Madan B. Lokur and Kurian Joseph — or a combination of the three senior-most and two junior-most judges. That would be the CJI, Justices Chelameswar, Gogoi followed by Justices Navin Sinha and Deepak Gupta.

Subject-wise roster

Justices Chelameswar, Gogoi, who is the next in line to be the CJI under the seniority norm, Lokur and Kurian Joseph had held the January 12 press conference, accusing the recent trend of CJIs selectively allocating cases to preferred Benches.

Subsequently, Chief Justice Misra published a "subject-wise roster" of cases to be handled by the Supreme Court judges. However, the roster has not eased criticism. As proof, Justice Chelameswar, responding to a question why all the important cases continue to be heard by Chief Justice Misra, responded: "He is the master of roster ... If he [CJI Misra] has the energy to do the entire work, let him do it."

Mr. Pande's petition follows an earlier petition filed by former Union Law Minister Shanti Bhushan for a declaration that the authority of the CJI as "master of roster" should not be reduced to an absolute, singular and arbitrary power.

Mr. Bhushan has asked the Supreme Court Registry not to place his petition before a Bench of which Chief Justice Misra is a part of.

END

Row over judge elevation hots up

Ravi Shankar Prasad

Union Law Minister Ravi Shankar Prasad, in a letter to Chief Justice of India Dipak Misra, has questioned if the Supreme Court collegium should recommend a person facing charges of sexual harassment for the post of a High Court judge in the absence of a “fair and judicious probe”.

In what seems to be a hardening of its position over the issue of elevating a Principal District and Sessions Judge to the High Court, Mr. Prasad is reported to have questioned the inquiry that cleared the district judge.

“Whether we should consider a discreet inquiry, even by a High Court Chief justice, as a fair, sufficient and conclusive inquiry,” the Law Minister asked in his letter regarding the inquiry that cleared P. Krishna Bhat of charges of sexual harassment filed by a subordinate woman judicial officer.

The Supreme Court Collegium recommended Mr. Bhat for appointment as a High Court judge in August 2016.

The Law Minister’s letter to the CJI comes just days after Justice Jasti Chelameswar had written to CJI Misra alleging government interference in judicial appointments and blaming the government for stalling Mr. Bhat’s elevation as a High Court judge even after a “discreet probe” by the Karnataka High Court absolved him of all charges.

Justice Chelameswar had also questioned if it was proper for the Law Ministry to write directly to the present Chief Justice of the Karnataka High Court for a fresh probe into the charges, bypassing the Collegium.

Law Ministry officials, however, maintained that given the “seriousness of the charges,” the government was duty-bound to look at the issue afresh.

Fair and just inquiry

“The complainant lady judicial officer reiterated her request for a fair and just inquiry to the Honourable President and Honourable Prime Minister through letters dated December 11, 2017. She has said that she has not been called upon to present her side of the story,” Mr. Prasad is reported to have written.

Mr. Prasad’s three-page letter, written on April 5, says the records do not indicate that the complainant was provided any chance to present her case, and asked whether a lady judge of the Karnataka High Court or a senior woman judicial officer conducted the enquiry as per the Vishakha case verdict.

“Whether pending the conduct and conclusion of a fair, judicious enquiry conducted by a lady judge, which would prove the innocence of the recommended officer, the Supreme Court Collegium should not withhold the recommendation of his appointment to the high constitutional office as a High Court Judge,” he asked.

END

List facilities at refugee camps: SC

Tough times:A file picture of a refugee camp in New Delhi.

The fundamental right to basic amenities and a dignified life cannot be confined to the Rohingya alone, but has to extend to their Indian neighbours living in the same slum.

The Supreme Court cannot shine the spotlight on Rohingya refugees without doing anything for the Indian living in the adjacent slum, Justice D.Y. Chandrachud remarked on Monday.

Basic amenities

The court was hearing PIL pleas to provide the refugees with basic amenities. Justice Chandrachud, who is part of a three-judge Bench led by Chief Justice Dipak Misra, said the right to life under Article 21 was equally applicable to all, whether an Indian citizen or not.

Senior advocate Rajeev Dhavan said: “The Rohingya is a special category of people. They cannot go back to Myanmar. They are the worst of the worst. The problem here is justice.”

Additional Solicitor-General Tushar Mehta, for the Centre, said every basic amenity was being provided to Rohingya without discrimination. But Justice Chandrachud said the government could not remain content with making general statements. “Do not make general statements. Make specific submissions like how many toilets you have built, etc,” Justice Chandrachud told Mr. Mehta.

The court directed the government to submit a report on the basic amenities provided to Rohingya camps in Delhi and Haryana. The next date of hearing is May 9.

END

The anatomy of equity

A considerable amount of heat has been generated around the terms of reference (TOR) of the 15th Finance Commission, such as the suggestion that 2011 population data be used. The heat needs to be supplemented with illumination from Constitutional provisions and the historical evolution of federal finance in India. Article 280 is about the Finance Commission. While Article 280(2)(a) is about the horizontal division of the divisible pool between Union and state governments and the vertical distribution of the aggregate state share between states, one cannot wilfully forget Article 280(2)(b). This states, it shall be the duty of the Finance Commission to make recommendations about "the principles which should govern the grants in aid of the revenues of the States out of the Consolidated Fund of India".

Unlike Article 282 of the Constitution, there is no suggestion of this being discretionary. Paragraph 8.13 of the 14th Finance Commission's report stated, "However, a compositional shift in transfers from grants to tax devolution is desirable", and there was an entire chapter (Chapter 11) on grants in aid. Those paragraphs and that chapter suggest 14th Finance Commission took grants in aid to mean Article 282, such as centrally sponsored schemes (CSSs). Therefore, except for local bodies and disaster management, it scrapped grants in aid and presumed formulae (with appropriate weights) would take care of everything. If this proposition is correct, on both legal and Constitutional grounds, logic dictates preceding finance commissions, which recommended grants in aid of the non-CSS variety, must have erred. At that time, there were no howls of protest that everything must be formulae-driven.

Why harp on grants in aid? Because there is a history to the Constitution and an evolution through the Government of India Act of 1935 (Article 142 of this legislation mentioned grants in aid). Because in the history of that evolution, there is an emphasis on equity, not just on efficiency. To name three reports out of many, the Indian Financial Enquiry Report (Niemeyer Report, 1936), Krishnamachary Enquiry Committee Report (1948) and Committee on the Financial Provisions of Union Constitution (Sarkar Committee, 1948) all considered the problem. Even if one forgets about grants in aid, the issue is exceedingly simple. Every citizen of the country, wherever he/she resides, must be entitled to a minimum basket of goods and services. Typically, these are public goods and services, because they won't be delivered by markets, and governments (in the plural) cannot abdicate the responsibility. A citizen cannot be penalised simply because he/she happens to be born in a relatively disadvantaged geographical area that lacks requisite physical and social infrastructure because of historical and other reasons. Every such public good or service is optimally delivered at a certain level of government, which is why I have used the word governments in the plural. The Seventh Schedule sets out these layers, Union, State and local body and this Seventh Schedule is also a part of that historical evolution.

Equity is inbuilt into any system of taxation, in every country in the world. As a citizen, I can't say I pay more taxes and, therefore, I am entitled to better quality publicly-funded health facilities than a relatively poorer person who pays fewer taxes. (That's the difference between a tax and a fee and private funding is completely different.) Let's say there is an aspirational district from UP, which is disadvantaged in terms of access to physical and social infrastructure. Because Noida pays relatively more taxes, surely a Noida resident doesn't have a valid argument against cross-subsidising that aspirational district. As it is with regions, so it is between states. A relatively more advanced state is supposed to contribute more in taxes so that a relatively more backward state is cross-subsidised. (One shouldn't forget that a relatively more advanced state is better positioned to tap non-tax resources, including private capital.) Nor should the debate only be about Union-state fiscal devolution. More than half the divisible pool is distributed to states. Therefore, more than half the heat and light should be devoted to the TORs of state finance commissions and the extent to which states have implemented their recommendations.

Many (indeed most) public goods and services are delivered by local bodies and therefore the devolution debate also needs to focus on resources of local bodies. If we are questioning the historical evolution and edifice of devolution, let's also question the Seventh Schedule. If health is today squarely in the State List, should the Union government at all contribute for the betterment of health outcomes? If the answer is yes, because health is important, by the same token, should state governments not contribute for the sake of defence, which is equally important? I am citing these examples to illustrate there is a much broader debate. We can't harp on 2011 population and duck the broader issue.

As is obvious, there is always a trade-off between equity and efficiency. Within formulae-based transfers, that's the reason every Finance Commission has separate indicators, some seeking to capture "equity", others seeking to capture "efficiency". The 15th Finance Commission hasn't yet finalised these indicators or their weights. Once the aggregate state share has been fixed, depending on the indicators and their weights, some states gain relatively more than others. That's inevitable in any such process and has happened with every Finance Commission. Before finalising indicators and weights, every Finance Commission consults states and others. The Finance Commission is a constitutional body and possesses the constitutional right to do so. These protests and public pronouncements, and even writings, have an undesirable shade of pre-empting the 15th Finance Commission's right and even influencing it, using means other than the due process, which is the consultative one. We don't yet know what this Commission is going to do with the 2011 population figure. (For the record, contrary to popular perception, the 14th Finance Commission also used 2011 population numbers, in addition to 1971.) We don't yet know what the 15th Commission is going to do with the expression in the TOR, "Efforts and Progress made in moving towards replacement rate of population growth". In a strictly legal sense, nothing in the TOR, except the bit which is a reference to Article 280, should be binding.

If every citizen is going to be entitled to the same minimum basket of public goods and services, on the equity part, there must be an attempt to compute the cost of delivering these public goods and services per capita. That's not easy to do and one looks for surrogate indicators that are objectively measurable. Several Finance Commissions, including the 14th, used population and geographical area. In 1936, Otto Niemeyer thought the same. It would be fair to "fix the scale of distribution partly on residence and partly on population". Is one seriously disputing that cost is a function of population? If not, surely the current population is more relevant than 1971. "Some States have suggested that since public goods and services have to be provided to the entire population, the Census data on population should be used for the purpose of devolution." This is a quote from the 14th Commission's report. If one considers views of the states on 1971 and 2011, stated before 14th Finance Commission, it wasn't a simple North-South divide, as many people seem to think.

The bottom line is simple. Let the 15th Finance Commission do its job and let everyone, including states, make submissions to the commission. If we want to engage in a public debate, that shouldn't be about the TOR, but about the broader theme of public finance and devolution all the way down to local bodies, including revamp of the Seventh Schedule.

END

Heed the federal framework

Most federations in the world have arrangements for the mobilisation and devolution of resources. In India, the Constitution provides for the appointment of a Finance Commission every five years to recommend methodology to share resources such that the fiscal space of the constituents, especially the States, is well protected.

The terms of reference of the 15th Finance Commission are thus a matter of utmost importance to the resources available to the States of India. The terms of reference of this Commission have created apprehension among States about principles of fairness and equity in the distribution of public resources for development. This article deals with some general matters of principle in this regard.

First, Article 1 of the Constitution of India recognises India as a Union of States. The unity of India can be preserved only if there is real fairness and equity in the matter of devolution of powers and resources to the States by the Central government. The foremost objective of the Finance Commission is an equitable distribution of financial resources between the two units of the Union.

Even a cursory glance at the State List in the Seventh Schedule of the Constitution shows that in the allocation of duties between the Centre and the States, fundamental tasks of enhancing human development, income growth, livelihoods, and protecting and sustaining the environment are entrusted to the States. However, although these major tasks of nation-building are the duty of the States, the resources to finance them are substantially controlled by the Centre.

I emphasise this point: the States in India today neither have the resources to fulfil their tasks as laid down in the Constitution, nor do they have the right to raise such resources. The present situation is not because of the action or inaction of the States but is directly the consequence of Central government policy.

There is thus a great asymmetry in India’s federal system. The Centre’s capacity to mobilise resources is far greater than that of the States, but the latter are required to undertake development expenditures that far exceed their revenue generating capabilities. The Constitution of India entrusts the Finance Commission with the responsibility of addressing this anomaly. So the basic mandate of the Finance Commission should be seen as that of deciding an appropriate quantum of unconditional devolution of resources from the Centre to the States, combined with more specific grants.

The devolution of resources by the 15th Finance Commission assumes further significance in the current environment, in which the finances of States have received a double blow in the form of demonetisation and the Goods and Services Tax (GST). The freedom of States to raise resources has been restricted by the introduction of the GST. They now have hardly any major tax left with them to make a difference to State resources.

Second, using the population data of 2011 as the base for tax devolution should not reduce the allocation of resources to States that have successfully reduced their rate of population growth. These States have incurred huge fiscal costs in order to achieve a lower population growth and healthy demographic indicators. They have made substantial investments on education, health and directly on family welfare programmes. Bringing down the rate of growth of population does not mean less expenditure for States. On the contrary, it creates new commitments by the States to those in the labour force and to senior citizens.

Many States of India today have achieved a replacement rate of growth of population or have

gone below that rate in a short span of time. An immediate effect of this is a sharp rise in the proportion of elderly in the population. The care of the elderly is the responsibility of State governments. The enhanced costs of such care must be considered by the Commission in making its awards and in deciding the population criterion to be used.

Third, the current terms of reference go far beyond the constitutional mandate of the Finance Commission. Indeed, they intensify efforts to use the Finance Commission as an instrument of fiscal consolidation and to impose the ideological and economic agenda of the Central government on the States. It is not the task of a Finance Commission to recommend “road maps for fiscal management” or to impose its perception of what policies are good for the people of the States. That is for democratically elected State governments to decide.

Fourth, this blatant interventionism finds further and dangerous expression in a statement that should not find a place in any list of terms of reference, that is: “the Commission may also examine whether revenue deficit grants be provided at all.” Revenue deficits are offshoots of the path of development followed by States and cannot be brought down in the short term. For instance, Kerala’s human development achievements are built on its investments in the people – in social sectors, health and education in particular. Public expenditure on them is a large part of the government spending and it has not been easy to bring down revenue deficits despite higher tax efforts. To discontinue post-tax devolution of revenue deficit grants would go against the principle of cooperative federalism.

Fifth, the terms of reference explicitly privilege the “committed expenditures” of the Centre. We should request the Commission to affirm its constitutional status and responsibility by upholding federalism and fiscal autonomy of the States. The Finance Commission should not take a “residual approach” to the question of vertical devolution. The approach should not be that of distributing what is left over after providing for the requirements of the Centre.

Sixth, the terms of reference are unprecedented in asking the 15th Finance Commission to consider proposing performance-based incentives beyond those relating to fiscal responsibility, population and devolution to local bodies. This reflects the viewpoint and ideological inclinations of the Central government and is an attempt to micro-manage the fiscal domain of the State governments. Let us not forget that in many spheres of activity, States have set the agenda for development. These sectors include health, education, forest management, public distribution of food, agricultural production — the list goes on. Such development was not because the concerned States received Central incentives. Best practices were created on their own initiative.

Thus, for the Finance Commission to propose “measurable performance-based-incentives” is nothing short of an attack on the federal structure mandated by the Constitution. It is not the duty of the Finance Commission to venture into the realm of day-to-day governance. The elected governments of States will decide what policies are appropriate for our people.

It is also not for the Finance Commission to declare this or that policy as “populist”. Any measure, from welfare pensions for the poor and weaker sections of the society to food assistance, can be termed as “populist” and recommended to be curtailed. This strikes at the root of a democratic polity in which State governments are free to implement welfare measures, albeit within conditions of fiscal responsibility.

Seventh, it is not correct that the fiscal space available to the Centre has shrunk following the 14th Finance Commission recommendations. The argument today that an increase in devolution from 32% to 42% led to a reduction of the fiscal space available to the Union government is not borne out by the evidence. In practice, when implementing the award of the 14th Finance Commission, the Union government cut allocations to several Centrally Sponsored Schemes in 2015-16. The

cutback was almost equal to the amount received by the States as a whole on account of the rise in share of taxes and duties. Thus, there was no squeeze of the fiscal space available to the Union government, because it had protected itself. In fact, the total resources devolved from the Union to all States put together has been declining as a share of GDP for some years now. There is no ground for reducing the share of States in the vertical devolution. The presumption now appears to be that the relative responsibility for development is shifting from the States to the Centre. Such a presumption, if accepted by the Commission, would shrink the fiscal space of the States and expand that of the Union government.

India's great wealth rests in its diversity. To recognise this diversity is also to recognise that States will follow diverse paths of development. The Finance Commission must facilitate diversity and a democratic path of development by respecting principles of equity and fairness in allocating resources between the Centre and States in India.

Pinarayi Vijayan is the Chief Minister of Kerala

END

Cabinet approves revision of pay and allowances of Lieutenant Governors of Union Territories

Posted On: 11 APR 2018 2:03PM by PIB Delhi

The Union Cabinet chaired by Prime Minister Shri Narendra Modi has given its approval for revision of pay and allowances of Lieutenant Governors of Union Territories. It will bring the pay and allowances of LGs at par with that of the Secretary to the Government of India.

Details:

The Cabinet has approved the proposal for increasing the pay and allowances of Lieutenant Governors of Union Territories with effect from 1st January, 2016 from Rs.80,000/- per month plus dearness allowance, sumptuary allowance at the rate of Rs.4,000/- per month and local allowances to Rs. 2,25,000/- plus dearness allowance, sumptuary allowance at the rate of Rs.4,000/- per month and local allowances at the same rate as applicable to the officers of the rank of Secretary to the Govt. of India It will be subject to the condition that the total emoluments (excluding sumptuary allowance and local allowances) shall not exceed the total emoluments drawn by the Governor of a State.

Background:

The pay and allowances of Lieutenant Governors of Union Territories remain at par with those of officers of the rank of Secretary to the Government of India. The pay and allowances of Lieutenant Governors of Union Territories was last revised with the approval of the Cabinet with effect from 1st January, 2006 from Rs. 26,000/- (fixed) per month to Rs.80,000/- (fixed) per month plus dearness allowance, sumptuary allowance at the rate of Rs.4,000/- per month and local allowances.

The pay of officers of the rank of Secretary to the Government of India has been revised from Rs. 80,000/- to Rs. 2,25,000/- per month with effect from 01.01.2016 as per CCS (Revised) Pay Rules, 2016.

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END

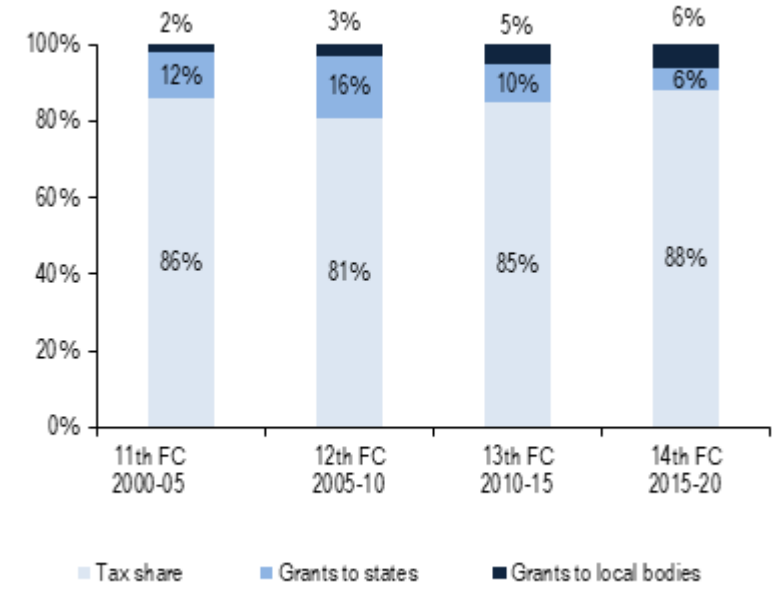
In November 2017, the 15th Finance Commission (Chair: Mr N. K. Singh) was constituted to give recommendations on the transfer of resources from the centre to states for the five year period between 2020-25. In recent times, there has been some discussion around the role and mandate of the Commission. In this context, we explain the role of the Finance Commission.

What is the Finance Commission?

The Finance Commission is a constitutional body formed every five years to give suggestions on centre-state financial relations. Each Finance Commission is required to make recommendations on: (i) sharing of central taxes with states, (ii) distribution of central grants to states, (iii) measures to improve the finances of states to supplement the resources of panchayats and municipalities, and (iv) any other matter referred to it.

Composition of transfers: The central taxes devolved to states are untied funds, and states can spend them according to their discretion. Over the years, tax devolved to states has constituted over 80% of the total central transfers to states (Figure 1). The centre also provides grants to states and local bodies which must be used for specified purposes. These grants have ranged between 12% to 19% of the total transfers.

Figure 1: Composition of central transfers to states



Sources: Reports of the 11th-14th Finance Commissions; PRS.

Over the years the core mandate of the Commission has remained unchanged, though it has been given the additional responsibility of examining various issues. For instance, the 12th Finance Commission evaluated the fiscal position of states and offered relief to those that enacted their Fiscal Responsibility and Budget Management laws. The 13th and the 14th Finance Commission assessed the impact of GST on the economy. The 13th Finance Commission also incentivised states to increase forest cover by providing additional grants.

15th Finance Commission: The 15th Finance Commission constituted in November 2017 will recommend central transfers to states. It has also been mandated to: (i) review the impact of the 14th Finance Commission recommendations on the fiscal position of the centre; (ii) review the debt level of the centre and states, and recommend a roadmap; (iii) study the impact of GST on the economy; and (iv) recommend performance-based incentives for states based on their efforts to control population, promote ease of doing business, and control expenditure on populist

measures, among others.

Why is there a need for a Finance Commission?

The Indian federal system allows for the division of power and responsibilities between the centre and states. Correspondingly, the taxation powers are also broadly divided between the centre and states (Table 1). State legislatures may devolve some of their taxation powers to local bodies.

Table 1: Some taxes levied by the centre, state and local bodies

Centre	States	Local Bodies
▪ Income Tax ▪ Corporation Tax ▪ Central GST ▪ Customs	▪ State GST ▪ Tax on Electricity ▪ Excise Duty on Alcohol ▪ Stamp Duty	▪ Tax on Land and Building ▪ Vehicle Tax ▪ Tolls ▪ Entertainment Tax

Sources: Constitution of India; PRS.

The centre collects majority of the tax revenue as it enjoys scale economies in the collection of certain taxes. States have the responsibility of delivering public goods in their areas due to their proximity to local issues and needs.

Sometimes, this leads to states incurring expenditures higher than the revenue generated by them. Further, due to vast regional disparities some states are unable to raise adequate resources as compared to others. To address these imbalances, the Finance Commission recommends the extent of central funds to be shared with states. Prior to 2000, only revenue income tax and union excise duty on certain goods was shared by the centre with states. A Constitution amendment in 2000 allowed for all central taxes to be shared with states.

Several other federal countries, such as Pakistan, Malaysia, and Australia have similar bodies which recommend the manner in which central funds will be shared with states.

Tax devolution to states

Table 2: Weight of criteria used by 11th to 14th Finance Commissions

Criteria	11th	12th	13th	14th
Income Distance	62.5	50.0		50.0
Population 1971	10.0	25.0	25.0	17.5
Population 2011				10.0
Index of Infrastructure	7.5			
Fiscal Discipline	7.5	7.5	17.5	
Tax Effort	5.0	7.5		
Fiscal Capacity Discipline			47.5	
Area	7.5	10.0	10.0	15.0
Forest Cover				7.5
Total	**100**	**100**	**100**	**100**

Source: Reports of the 1st to 14th Finance Commissions; PRS.

The 14th Finance Commission considerably increased the devolution of taxes from the centre to states from 32% to 42%. The Commission had recommended that tax devolution should be the primary source of transfer of funds to states. This would increase the flow of unconditional transfers and give states more flexibility in their spending.

The share in central taxes is distributed among states based on a formula. Previous Finance Commissions have considered various factors to determine the criteria such as the population and income needs of states, their area and infrastructure, etc. Further, the weightage assigned to each criterion has varied with each Finance Commission.

The criteria used by the 11th to 14th Finance Commissions are given in Table 2, along with the weight assigned to them. State level details of the criteria used by the 14th Finance Commission are given in Table 3.

- **Population** is an indicator of the expenditure needs of a state. Over the years, Finance Commissions have used population data of the 1971 Census. The 14th Finance Commission used the 2011 population data, in addition to the 1971 data. The 15th Finance Commission has been mandated to use data from the 2011 Census.
- **Area** is used as a criterion as a state with larger area has to incur additional administrative costs to deliver services.
- **Income distance** is the difference between the per capita income of a state with the average per capita income of all states. States with lower per capita income may be given a higher share to maintain equity among states.
- **Forest cover** indicates that states with large forest covers bear the cost of not having area available for other economic activities. Therefore, the rationale is that these states may be given a higher share.

Table 3: Share of states in central taxes as recommended by 14th Finance Commission

States	Share in taxes (%)	Population 1971 (%)	Population 2011 (%)	Area (%)	Forest cover (%)	Income distance (Rs crore)
Weight		**17.5**	**10**	**15**	**7.5**	**50**
Andhra Pradesh	4.3	5.1	4.1	4.1	3.4	73,979
Arunachal Pradesh	1.4	0.1	0.1	2.1	13.2	83,174
Assam	3.3	2.7	2.6	2.0	3.2	39,644
Bihar	9.7	7.8	8.7	2.4	0.9	24,584
Chhattisgarh	3.1	2.1	2.1	3.5	9.9	58,130
Goa	0.4	0.1	0.1	2.0	0.3	2,20,960
Gujarat	3.1	4.9	5.1	5.9	1.4	98,690
Haryana	1.1	1.8	2.1	2.0	0.1	1,16,179
Himachal Pradesh	0.7	0.6	0.6	2.0	2.4	1,06,285
Jammu & Kashmir	1.9	0.9	1.1	5.8	3.3	57,498
Jharkhand	3.1	2.6	2.8	2.1	3.1	44,028
Karnataka	4.7	5.4	5.1	5.0	5.6	76,781
Kerala	2.5	3.9	2.8	2.0	2.8	89,715
Madhya Pradesh	7.6	5.5	6.1	8.0	10.5	42,996
Maharashtra	5.5	9.3	9.4	8.0	7.5	1,03,091
Manipur	0.6	0.2	0.2	2.0	1.7	48,632
Meghalaya	0.6	0.2	0.2	2.0	2.6	65,762
Mizoram	0.5	0.1	0.1	2.0	1.5	73,549
Nagaland	0.5	0.1	0.2	2.0	1.5	62,472
Odisha	4.6	4.0	3.5	4.0	7.2	54,877
Punjab	1.6	2.5	2.3	2.0	0.2	92,055
Rajasthan	5.5	4.7	5.8	8.9	1.1	58,985
Sikkim	0.4	0.0	0.1	2.0	0.7	1,44,665
Tamil Nadu	4.0	7.6	6.1	3.4	3.3	98,327
Telangana	2.4	2.9	3.0	2.9	3.4	83,738
Tripura	0.6	0.3	0.3	2.0	1.2	55,524
Uttar Pradesh	18.0	15.4	16.8	6.3	1.6	33,815
Uttarakhand	1.1	0.8	0.8	2.0	4.8	95,971
West Bengal	7.3	8.2	7.7	2.3	1.8	58,323
All States	**100**	**100**	**100**	**100**	**100**	**64,290**

Note: Income Distance is measured on the average per capita GSDP (2010-12).
Sources: Report of the 14th Finance Commission; PRS.

Grants-in-Aid

Besides the taxes devolved to states, another source of transfers from the centre to states is grants-in-aid. As per the recommendations of the 14th Finance Commission, grants-in-aid constitute 12% of the central transfers to states. The 14th Finance Commission had recommended grants to states for three purposes: (i) disaster relief, (ii) local bodies, and (iii)

revenue deficit.

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END

Aadhaar leak may sway polls, fears SC

Justice D.Y. Chandrachud said the interaction of Aadhaar with the ‘outside world’ was an area of concern for the court.

It is a “real apprehension” that a leak in the Aadhaar data may sway elections and cause a severe dent to democracy, the Supreme Court expressed its fears about data protection at an age when private players are increasingly taking over what used to be exclusively governmental functions.

Senior advocate Rakesh Dwivedi, for Aadhaar’s nodal agency UIDAI, tried to allay the fears of the Constitution Bench led by Chief Justice Dipak Misra, by submitting that the Aadhaar Act provides for data protection.

Mr. Dwivedi countered that the UIDAI cannot be compared to any Cambridge Analytica.

He submitted that data protection should be “fair, reasonable and just.” In fact, no one could assure 100% data protection.

‘No learning algorithms’

The senior advocate said the UIDAI did not have any learning algorithms, which can aggregate and analyse data. Besides the UIDAI can refuse a private enterprise from becoming a requesting entity under the Aadhaar Act. He said whether the requesting entity is a taxi aggregator or a software app, it has to have a prior contract with the UIDAI.

But Justice D.Y. Chandrachud expressed fears about what use the requesting entities themselves would make of the personal data provided to them by the public. The judge said the interaction of Aadhaar with the “outside world” was indeed an area of concern for the court.

The judge illustrated that a private hospital, which may have data about the number of visits of its patients and their medication, could possibly pass the information over to insurance or pharma companies for commercial use.

Justice Chandrachud referred to Sections 8(3) and 29(3) of the Aadhaar Act which shows that requesting entities have “identity information” of citizens with them. They get access to this information when individuals come to them for authentication.

Justice Chandrachud said the authorities cannot risk a blinkered vision of reality. Mr. Dwivedi dissuaded the court from giving into the “hyperphobia” of the petitioners challenging the Aadhaar scheme. He reiterated that Aadhaar data was not subject to any kind of analysis and the people should trust the UIDAI with their data.

Mr. Dwivedi sought to reply to allegations made by the petitioners that Aadhaar reduces a person to a number, robbing him of his individuality. He said human beings were not reduced to numbers just because they were assigned a number as in proximity cards, passports, etc.

END

Law Commission for simultaneous polls

It recommends that in 2019, the election could be held in phases. In the first phase, it says, elections to the legislatures which are scheduled to go for polls synchronous with the Lok Sabha in 2019 could be held together. The rest of the States could go to elections in proximity with the Lok Sabha elections of 2024.

Citing no-confidence motion and premature dissolution of House as major roadblocks to simultaneous elections, the commission says the parties which introduce the no-confidence motion should simultaneously give a suggestion for an alternative government.

It even suggests the relaxation of the “rigours” of the anti-defection law in the Tenth Schedule to prevent a stalemate in the Lok Sabha or Assemblies in case of a hung Parliament or Assembly.

The panel says that in case of mid-term elections, the new Lok Sabha or Assembly would only serve the remainder of the term of the previous Lok Sabha/Assembly and not a fresh term of five years.

The commission says the Centre should get the Constitutional amendments, if agreed upon, to be ratified by all the States so as to avoid any challenge to them.

It also says that the Prime Minister/Chief Minister should be “elected” to lead by the full House like the Lok Sabha Speaker.

END

PIL has become an ‘industry of vested interests’: SC

Two sides:Nishant Katneshwarkar, Chief Standing Counsel of Maharashtra, and Prashant Bhushan, representing the petitioners, addressing presspersons after the verdict on the Loya PIL petitions on Thursday.Shanker Chakravarty

The Supreme Court on Thursday derided the Loya PIL petitions as a case in point of how public interest litigation has become an “industry of vested interests” rather than a powerful tool to espouse the cause of the marginalised and oppressed.

A Bench of Chief Justice of India Dipak Misra and Justices A.M. Khanwilkar and D.Y. Chandrachud said the essential aspect of a genuine PIL petition was that the “person who moves the court has no personal interest in the outcome of the proceedings, apart from a general standing as a citizen before the court.”

The PIL was envisioned by the Supreme Court’s legendary judges as “a powerful instrument to preserve the rule of law and to ensure the accountability of and transparency within structures of governance”.

Reality check

Justice Chandrachud, who authored the verdict, said it was time for the judiciary to do a reality check on the advent of PIL petitions which flooded the courts.

The judgment said PIL had now become a façade for people hungry for publicity or those who wanted to settle personal, business or political scores. The true face of the litigant behind the façade was seldom unravelled.

“It is a travesty of justice for the resources of the legal system to be consumed by an avalanche of misdirected petitions purportedly filed in the public interest which, upon due scrutiny, are found to promote a personal, business or political agenda. This has spawned an industry of vested interests in litigation,” Justice Chandrachud observed.

This “avalanche” would cost the judiciary and other democratic institutions dearly. The PIL had already “seriously denuded the efficacy of the judicial system by detracting from the ability of the court to devote its time and resources to cases which legitimately require attention.”

“Business rivalries have to be resolved in a competitive market for goods and services. Political rivalries have to be resolved in the great hall of democracy when the electorate votes its representatives in and out of office. Courts resolve disputes about legal rights and entitlements. Courts protect the rule of law,” the Supreme Court observed.

Judicial process would be reduced to a charade if nothing is done to close the floodgates of PILs, the court said.

END

Under scrutiny: On BCCI status

There is little surprise in the **Law Commission of India recommendation** that the Board of Control for Cricket in India be brought under the purview of the Right to Information Act. Over the years, the popular expectation that India's cash-rich and commercially successful apex cricket body will have to make itself more transparent and accountable has been rising. While the BCCI is a private body that needs no financial help from the government, it is being increasingly recognised that it performs significant public functions. Even though a five-judge Bench of the Supreme Court in 2005 held by a 3-2 majority that the BCCI could not be termed an instrumentality of the 'State' under Article 12 of the Constitution, subsequent developments have ensured that the public character of its functioning is widely recognised. In recent years, especially against the backdrop of the betting scandal that hit the Indian Premier League tournament a few years ago, the view that the cricket board is functioning in an opaque manner and not entirely in the game's interest has gained ground. The Supreme Court's intervention led to the constitution of the Justice R.M. Lodha Committee, which recommended sweeping reforms in the board's structure and the rules governing its administration. Many believe that implementing these reforms at both national and State levels would impart greater transparency in its functioning and lead to an overhaul of cricket administration in the country. The apex court also reaffirmed the public character of the BCCI's functions.

The Lodha Committee recommended that the board be treated as a public authority under the RTI Act, and the Supreme Court wanted the Law Commission to examine this suggestion. The Central Information Commission favoured the idea. The Union government has on different occasions maintained that the BCCI is a 'national sports federation' and, therefore, an entity that falls under the RTI Act's ambit. However, the BCCI is not one of the national federations listed on the website of the Ministry of Youth Affairs and Sports. Summing up its reasoning, the Law Commission has taken into account "the monopolistic nature of the power exercised by BCCI, the de facto recognition afforded by the Government, the impact of the Board's actions/decisions on the fundamental rights of the players, umpires and the citizenry in general" to argue that the BCCI's functions are public in nature. The board gets no financial help directly, but the commission has argued that the tax and duty exemptions and land concessions it got would amount to indirect financing by the state. A relevant question may be whether its autonomy would suffer as a result of being brought under the RTI. It is unlikely: other national federations are under the RTI and there is no reason to believe it would be any different for the BCCI. In fact, as a complement to the structural revamp, it may redound to the game's interest.

The revival of the Trans-Pacific Partnership, sans U.S., must buttress the free trade debate

END

Reviewing the Contempt of Courts Act

The Contempt of Courts Act of 1971 is one of the most powerful statutes in the country. It gives the constitutional courts wide powers to restrict an individual's fundamental right to personal liberty for "scandalising the court" or for "wilful disobedience" of any judgment, writ, direction or order.

The offence of "scandalising the court" continues in India even though it was abolished as an offence in England and Wales long ago.

On March 8, 2018, the Department of Justice wrote to the Law Commission of India, asking it to examine an amendment to the Act to nix "scandalising the court" as a ground for contempt and restrict contempt to only "wilful disobedience" of directions/judgments of the court.

The Supreme Court recently published a report that noted that 568 criminal contempt cases and 96,310 civil contempt cases were found pending in the High Courts. In the Supreme Court, as of April 10, 683 civil contempt cases and 15 criminal contempt cases have been shown as pending.

But the Law Commission has submitted a report stating that there is no point "tinkering" with the 1971 Act. The statute, it said, only lays down the procedure in contempt cases. "The powers of contempt of the Supreme Court and High Courts are independent of the Act 1971," the report of the Commission said. The contempt powers of the higher courts are drawn from the Constitution itself.

The Commission said that "to delete the provision relating to 'criminal contempt' inter alia 'scandalising of courts' will have no impact on the power of the Superior Courts to punish for contempt (including criminal contempt) in view of their inherent constitutional powers, as these powers are independent of statutory provisions". Additionally, Article 142(2) enables the Supreme Court to investigate and punish any person for its contempt.

The Law Commission informed the government that the 1971 Act was a good influence. In fact, the statute, by laying down procedure, restricts the vast authority of the courts in wielding contempt powers, it said.

The 1971 Act contains "adequate safeguards to exclude instances which may not amount to criminal contempt" as defined under Section 2(c) of the Act 1971. The Commission said the statute has stood the test of judicial scrutiny for about five decades. It empowers the High Court to act if someone is in contempt of the subordinate courts. Diluting the Act would expose the subordinate judiciary to acts of contempt of court.

With limited resources and time, it is crucial for States to assess which skills policies will make the biggest impact

END

Not this way

From driverless cars to smart speakers, ieDecode demystifies new technology

A group of seven Opposition parties has submitted a notice for an impeachment motion against Chief Justice of India Dipak Misra citing five reasons. This is the first such move against the top judge of the apex court in the country. It is a moment for a nation to pause, take a deep breath, ask some questions. First and fundamentally: Is impeachment, which is the extreme step to punish an errant judge, merited in this case? India's Constitution prescribes a layered and cumbersome process involving several stages. The bar is set deliberately high on the admissibility of such a move because the consequences for the system can be destabilising and debilitating. The judiciary is the guardian of the Constitution and its guarantee of individual liberties. Its independence is indispensable for other institutions and for the framework of checks and balances to remain in good health. So, do the five grounds on which CJI Dipak Misra is sought to be indicted meet the standard, pass the test? They don't.

There is an unmistakable air of tentativeness about the chargesheet drawn up against CJI Misra — his alleged involvement in a case relating to an educational trust that allegedly involved the payment of illegal gratification, his acquisition of land 39 years ago and surrendered later, his allocation of cases as master of roster. An impeachment motion must involve clear incapacity or proven misconduct. It cannot be the instrument by which mere suspicions about a judge's conduct are sought to be expressed or confirmed. It cannot be propelled by a difference of views in court. An impeachment motion must not be — it must not be seen to be — mired in the politics of the day. The move of the Opposition parties against the CJI comes a day after a CJI-led bench spoke on a case that has drawn extraordinary political attention — it dismissed petitions that sought an independent probe into the 2014 death of Judge BH Loya, who at that time was hearing the Sohrabuddin fake encounter case in which BJP president Amit Shah was an accused. Its timing does little to insulate the impeachment notice from Union Finance Minister Arun Jaitley's accusation that it is a "revenge petition".

To be sure, there is an unseemly stand-off, an unprecedented breakdown of trust within the Supreme Court today. Sharp anxieties have also been stoked about the court's ability and willingness to stand up to an executive armed with a decisive mandate, in the matter of the stalled Memorandum of Procedure or government delay in clearing appointments recommended by the Collegium. It is also true that for both these crisis, the CJI must take prime responsibility. Yet, an impeachment move by a divided Opposition is neither the answer nor the way out. It will only lead to a bruising politicisation of a court already divided, and to its embitterment, at a time when it needs to stand firm against external challenge. Perhaps the Opposition leaders helming the impeachment move should have listened to Justice J Chelameswar, one of the four SC judges who held a press conference against the CJI in January, but who insists that the solution must be found through an institutional "audit" and by putting in place a "proper alternative" — through correcting the system, that is, not by unsettling it.

END

Mission impossible: On simultaneous elections

The idea of holding simultaneous elections to the Lok Sabha and the State Assemblies appears to have caught the imagination of the Bharatiya Janata Party-led government at the Centre. Prime Minister Narendra Modi has been talking about this for some time now. It is not too much of a leap to surmise that he believes that voters are likely to back the same party in both elections, and that in the absence of a national alternative to his candidature at the Centre, such a voting pattern may help the BJP across States too. The Law Commission's move to seek the opinion of the public, political parties, academicians and other stakeholders, on the proposal appears to be aimed at giving concrete shape to this political viewpoint. The Commission has released a three-page summary of its draft working paper, setting out the amendments that may be required in the Constitution and electoral laws. It proposes to put together a report to forward to the Centre after getting the views of the public. Among its "possible recommendations" is a "constructive vote of no-confidence": while expressing lack of confidence in one government, members of the legislature will have to repose trust in an alternative. It also suggests that premature dissolution of the House could be avoided if all members sit together and elect a leader. This would entail a temporary waiver of the anti-defection law so that members could help form a stable government without the fear of disqualification. However, these are reforms that can be adopted even if simultaneous elections are not held.

Law Commission favours simultaneous elections

In principle, simultaneous elections to the Lok Sabha and State Assemblies have the benefits of saving poll expenditure and helping ruling parties focus on governance instead of being constantly in election mode. The flip side is that it is nearly impossible to implement, as it would mean arbitrarily curtailing or extending the term of existing legislatures to bring their election dates in line with the due date for the rest of the country. This would be the most difficult change to execute, as such a measure would undermine federalism as well as representative democracy. The Commission has suggested an alternative: categorise States based on proximity to the next general election, and have one round of State Assembly polls with the next Lok Sabha election, and another round for the remaining States 30 months later. This would mean that India would have a set of elections every two and a half years. But governments have been brought down or have collapsed on their own, leading to mid-term polls in different States and even at the Centre in different years. Given the difficulties involved in shifting to simultaneous elections, we may have to live with the reality that some part of the country will go to polls every few months.

The revival of the Trans-Pacific Partnership, sans U.S., must buttress the free trade debate

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Today, some Members of Parliament initiated proceedings for the removal of the current Chief Justice of India by submitting a notice to the Chairman of Rajya Sabha. A judge may be removed from office through a motion adopted by Parliament on grounds of 'proven misbehaviour or incapacity'. While the Constitution does not use the word 'impeachment', it is colloquially used to refer to the proceedings under Article 124 (for the removal of a Supreme Court judge) and Article 218 (for the removal of a High Court judge).

The Constitution provides that a judge can be removed only by an order of the President, based on a motion passed by both Houses of Parliament. The procedure for removal of judges is elaborated in the Judges Inquiry Act, 1968. The Act sets out the following steps for removal from office:

- Under the Act, an impeachment motion may originate in either House of Parliament. To initiate proceedings: (i) at least 100 members of Lok Sabha may give a signed notice to the Speaker, or (ii) at least 50 members of Rajya Sabha may give a signed notice to the Chairman. The Speaker or Chairman may consult individuals and examine relevant material related to the notice. Based on this, he or she may decide to either admit the motion or refuse to admit it.
- If the motion is admitted, the Speaker or Chairman (who receives it) will constitute a three-member committee to investigate the complaint. It will comprise: (i) a Supreme Court judge; (ii) Chief Justice of a High Court; and (iii) a distinguished jurist. The committee will frame charges based on which the investigation will be conducted. A copy of the charges will be forwarded to the judge who can present a written defence.
- After concluding its investigation, the Committee will submit its report to the Speaker or Chairman, who will then lay the report before the relevant House of Parliament. If the report records a finding of misbehaviour or incapacity, the motion for removal will be taken up for consideration and debated.
- The motion for removal is required to be adopted by each House of Parliament by: (i) a majority of the total membership of that House; and (ii) a majority of at least two-thirds of the members of that House present and voting. If the motion is adopted by this majority, the motion will be sent to the other House for adoption.
- Once the motion is adopted in both Houses, it is sent to the President, who will issue an order for the removal of the judge.

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Vice President's Secretariat

Translating “legislative intent” into “programmatic content” is need of the hour: Vice President

The focus has shifted to “implementation” and “innovation”;

‘Swarajya’ has to be meaningful for each Indian and, for this ‘Surajya’ is inevitable;

Inaugurates 2-day event of 12th Civil Services Day

Posted On: 20 APR 2018 1:49PM by PIB Delhi

The Vice President of India, Shri M. Venkaiah Naidu has said that translating “legislative intent” into “programmatic content” and demonstrating to the common citizens what “Surajya” actually looks like in day to day administration, the civil services have an enormous opportunity today. He was delivering the inaugural address at the 2-day event of the 12th Civil Services Day, here today. The Minister of State for Development of North Eastern Region (I/C), Prime Minister’s Office, Personnel, Public Grievances & Pensions, Atomic Energy and Space, Dr. Jitendra Singh and other dignitaries were present on the occasion.

The Vice President said that a clean, competent, people-friendly, proactive administrative leadership is the need of the hour. He further said that ‘Swarajya’ has to be meaningful for each Indian and, for this ‘Surajya’ is inevitable. There is a need for honest introspection into the effectiveness and efficiency of our administrative structures and processes, he added.

The Vice President said that the focus has shifted to “implementation” and “innovation” and it is becoming increasingly clear that “business as usual” approach will not do. We must collectively transform India into a nation that we can all be proud of, he added.

The Vice President called on officers of Civil Services to reorient their approach to look upon themselves as catalysts of change, as facilitators of change, as inspirational leaders for an aspirational India. He further said that it is the collective responsibility of the executive, the legislature, the judiciary and the media to identify, combat and root out evils including casteism, communalism, corruption, inequality, discrimination and violence. We need to be sensitive to these unpleasant realities and try to alter them by being unbiased and evenhanded, he added.

Following is the text of Vice President's address:

"It is indeed a great privilege to be a part of the two day celebration of Civil Services Day and address this gathering of change makers.

Today is a day of celebration, a day that reaffirmsthe competence, commitment and confidence of the civil services to make a difference to the governance landscape of our country.

I am happy to be with the officers who are being recognized for their quest for excellence. I compliment them as well as those who are engaged in similar innovative initiatives across the country.

Our country's civil services are among the best in the world.

They constitute the best and the brightest minds of our country.

They have the ability to absorb new information and knowledge, adapt to a rapidly changing socio-political environment and address the key challenges in contemporary society.

Many of them have the forward looking, strategic vision to guide policy formulation and the drive to make a difference in service delivery.

The essential gap today is between the grandiose conception and the ground level implementation.

There is an urgent need to re-think our existing governance paradigm.

There is a need for honest introspection into the effectiveness and efficiency of our administrative structures and processes.

It is this introspection and reflection that has made many civil servants, some of whom are getting awards today, to come up with alternative strategies for improving the system.

I wish and hope that many more civil servants would also think afresh and keep raising the bar through innovative solutions.

After all, even for the best, there is always a possibility to become better.

And there is no better time than now.

There is an unmistakable air of buoyant optimism today.

The clarion call of the Prime Minister to "Reform, Perform and Transform" has found a rare resonance everywhere.

The focus has shifted to "implementation" and "innovation". It is becoming increasingly clear that "business as usual" approach will not do.

Age –old institutions like the Planning Commission are being reinvented. The overarching idea is clear. We must collectively transform India into a nation that we can all be proud of.

‘Swarajya’ has to be meaningful for each Indian. And, for this ‘Surajya’ is inevitable. Nothing short of a paradigm shift in governance will be adequate.

A clean, competent, people-friendly, proactive administrative leadership is the need of the hour.

Translating “legislative intent” into “programmatic content” and demonstrating to the common citizens what “Surajya” actually looks like in day to day administration, the civil services have an enormous opportunity today, like never before, to serve the country and our people.

With the mantra of ‘Reform, Perform and Transform’ and focusing on ‘Gaon, Garib, Kisan, Mahila aur Yuva’ government has taken up several schemes and programs like Pradhan Mantri Jan Dhan Yojana, Pradhan Mantri Suraksha Bima Yojana, Pradhan Mantri, Atal Pension Yojana, Sukanya Sammriddhi Yojana , Ujjwala Yojana, BetiBachao, BetiPadhao ,JAM- Direct Benefit Transfer, Mudra Yojana, Start up India, Stand Up, Skill India, , Swachh Bharat , Housing for all, Ayushman Bharat, Mission Indradhanush, Power for All, Ujala Scheme (Led’s), Make In India, Swadesh Darshan, Smart Cities, Amrut, Hriday, Namami Gange, Sagarmala, Look east, Khelo India,

Government E Market place – GEM to root out corruption in Government Procurements, GST: One Nation, One Tax and may more.

All these schemes and programmes are building blocks of a new resurgent India we wish to build, for the renaissance we are ushering in. Effective and timely implementation of these schemes and programmes are huge managerial challenge.

We have the strength within our country to achieve results. We have only to get our act together.

As the Vedic sages have said, “Samgachadhvam”, let us walk together.

As the Prime minister has envisaged, we should work as Team India with people as the main agents of change.

We must aspire for a new India where everyone will become part in the developmental process and get the fruits of it.

Civil Services have to reorient their approach to look upon themselves as catalysts of change, as facilitators of change, as inspirational leaders for an aspirational India.

Sisters and Brothers,

This I said was a renaissance and resurgence. Probably, I should add that this is probably the second renaissance, the first one occurred when India became independent and the all India Services were established.

Modern Indian civil service initially established by the British underwent a metamorphosis after independence. Sardar Vallabhbhai Patel, the chief architect of an integrated India and the visionary ‘Iron’ man who established the ‘steel frame’ of all India services had succinctly envisaged this metamorphosis in his stirring address to the civil service probationers at Metcalfe House in New Delhi on 21st April, 1947:

“The service will now be free to or will have to adopt its true role of national service without being trammelled by traditions and habits of the past; officers must be guided by a real spirit of service in

their day-to-day administration, for in no other manner can they fit in the scheme of things."

This is the expectation expressed by the founder of India's civil services nearly seventy years ago.

As we commemorate that extraordinary speech of the great legendary unifier of the country, we need to examine how far we have lived upto those expectations.

The shift and the transformation that Sardar Patel envisaged was a shift in attitude, a shift in our behavior.

It is a shift from doing a 'job' to 'serving the people'. The job has a higher objective, a different yardstick for success. It should have 'people' at the centre and it should be done with a "spirit of service".

The first is 'empathy'. The civil service is the most visible 'face' of the government since citizens contact the civil servants for various services. The government's image depends to a large extent on the image of the civil service and the manner in which it responds to people's needs and aspirations. Empathy and courtesy at the cutting edge level can really enhance customer satisfaction. In fact, the hallmark of a well-functioning civil service is the ability to 'serve' the citizens with respect and alacrity.

What does this spirit of service to people entail? It necessitates, in my view, a number of attitudinal shifts. Let me mention just a few important ones.

First and foremost, it requires us to have the 'humility' to hear the voices of the people, the humility to learn from different people and the humility to accept if there are deficiencies.

Second is the 'agility', the ability to access information and knowledge and creatively apply them to new situations. Keeping our eyes and mind open and our ears and feet to the ground, we need to innovate and improvise to suit the life contexts of the people we are serving.

Third, is to re-define "accountability" and shifting the focus to 'outcomes' and not merely concentrating on 'activities'. If we have to serve the people, we must know what the real concerns are and be able to address them. We must have the ability to measure our success by the tangible outcomes, by the changes we are able to bring about in the lives of our people.

In this context, it is good to recall Mahatma Gandhiji's wise counsel:

"Whenever you are in doubt, or when the self becomes too much with you, apply the following test. Recall the face of the poorest and the weakest man [woman] whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use to him [her]. Will he [she] gain anything by it? … Then you will find your doubts and yourself melt away."

When we talk of 'service to people', it is good to look at the segmentation of our society and shift our focus towards those segments of people which are marginalized and voiceless. We ought to be especially attentive to these feeble but important voices. As Dr. B.R. Ambedkar said in his speech to the Constituent Assembly on December 9, 1946:

"If we wish to preserve the Constitution in which we have sought to enshrine the principle of Government of the people, for the people and by the people, let us resolve not to be tardy in the recognition of the evils that lie across our path and which induce people to prefer Government for the people to Government by the people, nor to be weak in our initiative to remove them. That is

the only way to serve the country. I know of no better."

The evils that Dr. B.R. Ambedkar had hinted at are the social evils including casteism, communalism, corruption, inequality, discrimination and violence. These evils continue to raise their ugly heads in different parts of the country at different times. They are a blot on our country's history.

As leaders in country's governance, it is the collective responsibility of the executive, the legislature, the judiciary and the media to identify, combat and root out these evils.

We need to be sensitive to these unpleasant realities and try to alter them by being unbiased and evenhanded. This can accelerate the building of a new India, an inclusive India, an integrated India and an innovative India. Sardar Patel's exhortation to the All India Service probationers, on April 21, 1947, to maintain utmost impartiality in administration is as relevant today as it was then. He cautioned: "A civil servant cannot afford to, and must not, take part in politics. Nor must he involve himself in communal wrangles. To depart from the path of rectitude in either of these respects is to debase public service and to lower its dignity".

Sisters and brothers,

You, as civil servants, have been the sheet anchor of our democratic polity. You have provided the 'continuity' and 'stability' we need in governance. Now, I am happy that you are also revamping the system to induce greater 'predictability', 'accountability' and 'agility'.

We are living in interesting times. On the one hand, we have formidable challenges, some of them seemingly intractable ones. On the other, we have new frontiers of knowledge, science and technology opening up new possibilities. You are uniquely positioned to find the best fit between the problem and ideal solutions.

This is, I realize, a constant search because the nature of the problems as well as the range of solutions keep changing very rapidly.

But, if you keep the constitutional mandate of civil services in view and the larger picture of serving India as the overarching objective of your mission, a lot of good ideas can emerge and get translated into people-centered policies and programmes.

Sisters and Brothers,

We are an aspirational young democracy, the largest in the world and in the throes of a socio-economic transformation. We need to blend the competencies of diverse stakeholders to achieve a synergistic momentum towards inclusive growth.

I know that many of you have been thinking and acting on these lines. India needs more of your kind. India needs a civil service that constantly refines itself and delivers the finest service at the cutting edge level effectively and efficiently.

I am glad that you are conducting a number of sessions today focused on the areas of Artificial Intelligence, Agriculture, Housing, Skilling and Digital Payments. I hope the discussions will lead to substantive recommendations which will help further advance the cause of developing strong responsive public administration and governance systems. I shall be delighted to hear of the outcomes of your deliberations.

I once again congratulate all the civil servants on their tireless efforts to make our country and our

planet a better place to live and work. As our ancient sages have said “*Shubhaaste Panthaanah Santu*” (Let your path be full of goodness).

Thank You!

Jai Hind!”

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Unprecedented crisis: on independence of the judiciary

These are extraordinary times for the judiciary. From signs of a confrontation with the executive over judicial appointments to an **unpleasant rift among Supreme Court judges**, it has seen much turmoil recently. The process initiated by major Opposition parties to impeach the Chief Justice of India is an unprecedented crisis. The motion, details of which cannot be revealed under Rajya Sabha rules until it is admitted, draws its substance and arguments mainly from the points raised by the four senior-most judges, whose dissent brought simmering differences to the fore. Their main charge, that **CJI Dipak Misra** selectively assigns cases to Benches of his choice, had some dark ramifications, including insinuations about the way he dealt with a petition by a medical college on the judicial and administrative side, and a case of suspected judicial bribery. The CJI has stuck to his position that as 'master of the roster' he has the prerogative to allot cases. Are the senior judges who question this entirely wrong? While putting in place the collegium system for judicial appointments, the Supreme Court said "consultation with the Chief Justice" meant "consultation with a plurality of judges". The argument that the power to allot cases should be exercised by the Chief Justice in consultation with senior judges may have some substance from this point of view. The counter-argument is that a principle evolved for appointments can't be stretched to cover routine functions such as constituting Benches. But this still raises the question: could the CJI have better addressed his colleagues' concerns and put in place an informal consultative system, so the damage the institution has suffered could have been avoided?

Impeachment move doesn't fetter CJI, say experts

The movers of the motion do not have the numbers to get it passed. And it is wholly within the power of Vice-President and Rajya Sabha Chairman M. Venkaiah Naidu to decide whether to admit it. Against this backdrop, the **impeachment attempt** led by the Congress may be perceived in some quarters as no more than a political move to highlight its claim that key democratic institutions are in danger under the present regime. To the people at large, the real question is whether it is the internal rift or the executive's attempt to keep it under its thumb that poses the greater danger to the judiciary. The Rajya Sabha Chairman will have to weigh one question before admitting the motion: what will cause greater damage to the institution, pursuing the process or rejecting it outright? Some may say any inquiry into the CJI's conduct will imperil judicial independence, and others may argue that ignoring the allegations will be more dangerous. The Constitution advisedly envisages the impeachment of superior court judges as a rigorous political process driven by Parliament. It has in-built safeguards such as an inquiry by a panel of judges, and a two-thirds majority in both Houses. The intention is to provide for both accountability and independence of the judiciary. Neither of these objectives can be dispensed in favour of the other.

Attempts to undermine the investigation into a little girl's rape and murder must be resisted

The revival of the Trans-Pacific Partnership, sans U.S., must buttress the free trade debate

END

Remedy for impeaching CJI can’t be worse than disease

From driverless cars to smart speakers, ieDecode demystifies new technology

In 1991, when I joined the Supreme Court, the great crisis than was the proposed impeachment of Justice V Ramaswami. The lawyer handling his case in Delhi was Ranjit Kumar (lately Solicitor General of India), while J S Kehar (lately Chief Justice of India) handled the case in Chandigarh. His counsel before the Supreme Court and before the Lok Sabha, was Kapil Sibal. The impeachment process raised the stature of the lawyers concerned but the judge concerned did not regain his lost lustre.

In May 1993, I watched from the galleries of the Lok Sabha as the motion to impeach Justice V. Ramaswami failed, when the Congress abstained from the final vote. The then prime minister P V Narasimha Rao stayed mum on the abstention, which had been procured by a near revolt of South Indian MPs of that time. The MPs felt that a South Indian Judge was being impeached for minor misdemeanours, that were overlooked in the cases of others. What stayed in my mind, as a young lawyer, was how easily the politics of the situation had triumphed in Parliament, over the many fine points of law and fact that would have won in a courtroom.

I thought that an impeachment was a once in a lifetime event, a story to be recounted to my grandchildren. I was wrong. The proposed impeachment of Justice P D Dinakaran of Madras, and the passing by the Rajya Sabha of the motion to impeach Justice Soumitra Sen of Calcutta both occurred in 2011. Seven years later I now see a requisition for the impeachment of Dipak Misra, Chief Justice of India. I did not think I would see such a day.

An impeachment rarely succeeds in removing a man from office, because often a person facing it resigns before the actual motion being passed, as happened with US President Richard Nixon. But the mere bringing of an impeachment motion is enough to permanently mark the man’s historical legacy. We still remember Bill Clinton more for the impeachment arising out of the Lewinsky affair and less for his eight years of sagacious leadership of the American economy.

At the heart of the impeachment process is realpolitik — politics based on practical objectives rather than on ideals. No matter the professed denials, the proposed impeachment of the Chief Justice has turned into an Opposition versus Government fight. Coming so soon after the verdict in the Judge Loya case and after the commencement of the hearings in the Ram Janmabhhomi/Babri Masjid title suit, it is difficult to believe that the impeachment requisition is untainted by political motive. However, it can be equally argued that no Chief Justice has ever had four of his seniormost colleagues publicly warn against a threat to judicial independence from within.

Whatever be the merit of the five charges, raised in the letter of requisition (or the lack thereof), the process now requires the Treasury benches to play defence to the attack and offence given by the requisitioning parties in Opposition. Throughout all this, the judiciary must protect its only asset, the public perception of its neutrality and independence. It is time, therefore, to think institutionally, rather than in personal terms.

In the first instance, there must be no attempt to abort the process by administrative sleights of hand. Reports that the presiding officer will refuse to act on the requisition or will derail it in some manner, must be firmly put to rest. We cannot have any individual judge, much less the Chief Justice of India, is seen as beholden to any manoeuvre on the part of a Parliamentary functionary. We cannot also have a scenario where any inquiry under the Judges (Inquiry) Act, 1968, is scuttled by the judicial manoeuvre of some kind. Sunlight is the best disinfectant and any attempt

to sweep dirt under the carpet is always an invitation to future disaster.

But while the institutional response from Parliament and the judiciary must be clear and unambiguous, as a student of politics, I do believe that there is scope for rethink on the political side. In the late 1960s, an unsuccessful litigant Allen OP Gupta tried to impeach Justice (later Chief Justice) J C Shah, who had ruled against him in a service case. Nearly 200 parliamentarians led by the Socialists, signed on Gupta's requisition against Justice Shah. When the actual facts began to come out, the MPs withdrew their signatures and the matter did not proceed further. I would urge today's members of parliament to do a similar re-think. Impeachment proceedings need to be deliberately threatened and contemplated. They should not be instituted on individual pique.

Irrespective of party loyalties, there has to be a greater loyalty to the country and its institutions. The Constitution makers deliberately provided judges of constitutional courts with protection against arbitrary removal. They possibly did not contemplate a situation where the prospect of removal constituted a punishment in itself.

The same Congress party, while in power and despite extreme provocation, refused to sack General V K Singh as Chief of Army Staff. General Singh had no constitutional protection, but as the head of an institution, the respect he commanded was institutional and not personal. The same thoughtful consideration does not appear to have been given, while in opposition. The exception, however, is some senior members of the Congress in Parliament who have deliberately refused, to be signatories to the requisition.

The remedy for impeaching a Chief Justice, cannot be worse than the disease of an unresponsive judiciary. Even if you can cut off a head, that is no cure for a headache.

END

Should TN governor be removed for his over-reach?

From driverless cars to smart speakers, ieDecode demystifies new technology

The Dravida Munnetra Kazhagam (DMK) has repeatedly questioned the utility of a Governor who comes from a political party in opposition to the one running the state. If the Governor is a person who can function as bridge between the State and the Union of India, then such a person must be one who is above politics and trusted by both governments. On both counts, the tenure of Banwarilal Purohit thus far must be seen as a failure.

The Governor of a state, being the nominal executive head, exercises certain functions in accordance with the Constitution. Article 163 of the Constitution says the Governor will normally be aided and advised by the Council of Ministers except in those functions which require his discretion. Besides this, the Governor also enjoys statutory powers under any other laws made by the state. For example, the Governor functions as ex-officio Chancellor of universities because of the various laws passed by the state government. For example, the Anna University Act 1978 appoints the Governor as Chancellor of the university.

According to academics Haridwar Rai and Rup Narain Jha, the reason for the appointment of Governors as Chancellors is to ensure that the universities are run in “conformity with broad Government policy and also that their finances are under strict supervision”. There are no special powers given to Governors beyond what is enacted by the state legislature. The Governor is, therefore, duty bound to abide by the particular university laws when he performs the functions of a Chancellor. The university laws are subject to amendments by the state legislature and therefore, it implies that the Governor, when he is functioning in the capacity of a Chancellor, is still bound by the aid and advice of the Council of Ministers.

This view is expounded in the landmark case Samsher Singh vs Punjab 1974, which was decided by a seven-judge bench of the Supreme Court. Such a view makes the recent appointment of Vice-Chancellor to Anna University, without the consultation of the state government, wholly unlawful and unsustainable. The Governor has also been conducting “review meetings” which is an over-reach of his Constitutional duties.

Also Read | Do men see women only as daughters or sexual objects?

On the other hand, the Governor is also embroiled in a controversy after calling for a media interaction to discuss allegations of the trafficking of girls by Assistant Professor Nirmala Devi. It was expected that the focus on the press meet would be on what authority did the Governor suo moto initiate an inquiry under a retired official, R. Santhanam, and whether any law or precedent practices permitted this. However, it became obvious that the Governor was ill-equipped and ill-prepared for such an interaction and his mainstay argument was that he was a “grandfather”.

The Governor was not advised that there is no legal immunity to older men from being investigated on criminal charges and such a defence only seemed to weaken the credibility of the Santhanam Committee.

Moreover, towards the end of the interaction, the Governor acted in an inappropriate manner with a woman journalist prompting immediate outrage. The irony that such an incident took place during a press meet called to discuss allegations of sexual misconduct and crimes against women is not lost on anyone. In fact, it further affirms the risks, hurdles, challenges and threats faced by working women across the country. The Governor’s apology written to the journalist today makes the lame excuse that he considered her to be his “granddaughter”. The entire incident is a

textbook example of how powerful men can get away with inappropriate behaviour.

It is amidst these developments that the DMK has called for the resignation or removal of the Governor. It is expected that the Governor will now brazen it out ad refuse to step down. It is important to recall here that the Supreme Court, speaking through a five-judge bench, in B P Singhal vs Union of India, 2010, has reaffirmed the grounds in which a Governor may be removed by the President. One such ground is “behaviour unbecoming of a Governor”. It is now up to the President to decide whether this would be attracted in the present case.

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We need strict laws that fix accountability for data leaks

Expressing his concerns about the aggregation of personal data given by individuals for commercial purposes, Justice D Y Chandrachud said on Thursday: “The 1.3 billion Indians may be poor, but we are a goldmine of commercial information.”

Breach of privacy and misuse of data is a growing concern across the world today. The Facebook-Cambridge Analytica controversy has taken the debate beyond the misuse of large databases for individual surveillance. As allegations of data stolen from Facebook being used to influence elections have surfaced, democracy itself is seemingly coming under threat in the digital age.

While these are extreme events, lack of a well-defined institutional framework regarding use and collection of data has created important concerns in other areas as well. The biggest issue in this regard probably is extreme concentration of economic power which access to data is creating. Internet giants such as Facebook and Google are extremely difficult to compete with in today’s world. While they do not charge their consumers directly and could even offer to subsidise them, as was the case during the net neutrality debate involving Facebook’s free basic services, they stand to earn a lot through advertising on their platforms. The data they possess also lends itself to commercial use by third parties who can access it illegally as well. Once compromised, there is no limit to commercial exploitation of such databases.

Unless there are strict laws that fix accountability for leaks with the companies which possess such data, they are unlikely to take efforts to protect it. It takes money to secure such data and companies are always trying to maximise profits and minimise costs. There is a flip side to this argument as well. If all companies are obligated to follow similar protection standards, the new entrants might die even before they are born because they would not have the resources to afford such technology.

An even bigger problem is the fact that people whose information is stored in these databases and those who use them might not be aware of the consequences of their actions. This is more likely to be the case in a country like India, where education levels let alone awareness about digital technology are poor. Government departments and individuals have been found wanting in adhering to data privacy practices. It will take much more than a privacy law to take care of Justice Chandrachud’s concerns.

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Mandate and allocations

It is not without reason that the presidential terms of reference (ToR) of the Fifteenth Finance Commission have raised questions, and the recent conclave of Finance Ministers of the southern States to discuss contentious issues in the ToR is only the beginning. In the months ahead more debate on this is likely. But the line by the media that this conclave was about concerns over the directive to use population data in the ToR from the 2011 Census, and not the 1971 Census that was used earlier, is an exaggeration.

To be fair, the meeting was called to discuss all contentious issues. Of course, for the southern States the issue of population was a point of concern and provided a common meeting point for the Ministers. But this was not the only area.

Conceptually, general purpose transfers to States by way of tax devolution and grants are meant to enable them to provide comparable levels of public services at comparable tax effort. Public services have to be provided to the current population and not just the population of either the 1971 Census or the 2011 Census. The earlier Finance Commissions were issued the directive to use population data of 1971 based on a parliamentary resolution.

In fact, the Thirteenth Finance Commission expressed its frustration when it said: “We are bound by our ToR to take into account population figures for the States based on the 1971 Census” and assigned 25% weight to the factor. The Fourteenth Commission, after examining various factors to represent demographic changes, chose population figures of 2011 and assigned 10% weightage in addition to the 17.5% weightage given to the 1971 population data. The ToR for the present Commission could have been silent on which population figures should be used and avoided a controversy. In any case, from the perspective of economic objectives, there is no justification in using 1971 population data as a factor in the horizontal distribution of funds. From a political perspective, the use of 1971 population data will result in losers and gainers.

States need to debate a number of contentious issues in the ToR which affect the very structure of fiscal federalism. These include: asking the Commission “to examine whether revenue deficit grants be provided at all”; considering “the impact of [the] fiscal situation of the Union government of substantially enhanced devolution by the Fourteenth Finance Commission, coupled with continuing imperative of the national development programme including New India 2022”; looking at the conditions that may be imposed by the Central government while providing consent to States when they borrow under Article 293(3); asking the Commission to propose measurable performance-based incentives to States in respect of a number of areas such as the implementation of flagship schemes, progress towards replacement rate of population growth, a control or lack of it in incurring expenditure on populist measures; and finally, promoting ease of doing business.

It must be noted that issuing directives and guidelines to the Finance Commissions has been done even in the past and there are cases of States taking serious objection to such directives. Although the basic ToRs of the Commission are laid down in Article 280 of the Constitution, guidelines and directives are given by the Union government under clause: “any other matter referred to the Commission by the President in the interests of sound finance”. However, the ToR of the Fifteenth Commission raise questions about constitutional propriety and has implications for the federal fabric of the nation itself.

Take, for example, the suggestion that the Commission may examine whether the revenue deficit grants should be given at all. The very objective of Article 275 is to enable the Commission to give grants to offset post-devolution gaps between normatively assessed revenues and expenditures. If the Commission takes this suggestion seriously, it will have serious ramifications for States with genuinely large resource gaps.

Never before in the history of the country has a Finance Commission been asked to review the recommendations of the previous Commission on the grounds that it gave “substantially enhanced devolution”. It has been clarified several times that the Commission had to include the grants for State Plan Schemes in its devolution. Furthermore, it desisted from giving discretionary and sector-specific grants including those for the environment.

Analysis shows that the increase was just about 2-3% of the divisible pool. Nudging the Commission to leave larger fiscal space for implementing national development programmes under New India 2022 is to ask it to leave more funds for making further intrusions into State subjects. The ToR seek to reduce the role of Article 275, which is a legitimate channel for grants, and asks the Commission to leave it more fiscal space to expand grants under Article 282, which is questionable.

Asking the Commission to take into account the performances in implementation of various Central schemes is equally contentious. The Seventh Schedule of the Constitution assigns the respective functions in terms of Union, State and Concurrent subjects. It is ironical that the Union government has been intruding into State subjects through Central schemes by forcibly using fiscal space. Performances must be built into the implementation of schemes and not into the tax devolution formula. It must be noted that devolution of taxes to States is not a charity; it is their right. As pointed out by the Sixth Finance Commission, “It is misleading to speak in terms of redistribution of resources between the Centre and States. It will be more appropriate to view the problem as one of distribution of resources as between the subjects coming constitutionally within the competence of the Centre and those coming within the purview of States. The resources belong to the nation and they should be applied at points where they are needed most.”

Although it has by now become customary to issue guidelines, those issued this time raise questions of constitutional propriety. The ToR of the Ninth Finance Commission had raised considerable disquiet among States when it was asked to adopt a normative approach. The Chairman of the Commission had to allay their apprehensions in his letter to all the Chief Ministers saying: “It is the Commission’s prerogative to adopt such approach and method as it considered fit and appropriate on subjects covered by (a) and (b) of Article 280(3) of the Constitution. In view of the Presidential notification, however, the Commission would consider, inter alia, adopting a ‘normative approach’ wherever appropriate in the interest of sound finance. But by doing so, the Commission would apply a uniform, just and equitable yardstick both to the Centre and States.”

The ToR of the present Commission raise even more serious issues of constitutional propriety and, hopefully, States will safeguard their turf to preserve the federal fabric of the country.

M. Govinda Rao, Emeritus Professor, National Institute of Public Finance and Policy, was a member of the Fourteenth Finance Commission. The views expressed are personal.

END

Reimagining governance

The 115 Aspirational Districts Programme (ADP) conceived by Prime Minister Narendra Modi is radical not because this is the first time that a government in India has focussed on India's most backward districts but because the exercise envisages a serious re-imagination of government and governance, and deepens cooperative federalism. The programme is informed by the failures of the past and therefore has a more contemporary vision of how public services are best delivered to those who need them most.

The 115 districts were chosen by senior officials of the Union government in consultation with State officials on the basis of a composite index of the following: deprivation enumerated under the Socio-Economic Caste Census, key health and education performance indicators and the state of basic infrastructure. A minimum of one district was chosen from every State. Unsurprisingly, the largest concentration of districts is in the States which have historically under-performed such as Uttar Pradesh and Bihar, or which are afflicted by left-wing extremism such as Jharkhand and Chhattisgarh. Moving forward, the areas that have been targeted for transformation are: education, health and nutrition, agriculture and water resources, financial inclusion, basic infrastructure and skills. Deliberately, the districts have been described as aspirational rather than backward so that they are viewed as islands of opportunity and hope rather than areas of distress and hopelessness. Attitudes and narrative matter for outcomes.

There is no financial package or large allocation of funds to this programme. The intent is to leverage the resources of the several government programmes that already exist but are not always used efficiently. The government doesn't always need to spend more to achieve outcomes but instead to spend better. Many schemes of the Centre have flexible spending components which permit autonomy at the level of local governments but these are seldom used in practice due to controlling Central and State machineries.

Achieving success in this programme requires three tiers of government, the Centre, States and district administrations, to work in tandem. There is a structure in place. Each district is assigned a prabhari (in-charge) officer from the Centre (of additional secretary or joint secretary rank) and a prabhari officer from the State (of the rank of Secretary to State government) who will work in cooperation with the district administration. It is necessary for the Centre and States to be involved because not all decisions can be taken at the level of district. For example, if there is a shortage of teachers in a local school or a shortage of health personnel in a primary health centre, it needs the State capital to act, possibly through transfers of personnel from over staffed areas. On financial inclusion, the full cooperation of banks is necessary and only the Central government has leverage over them. But most crucial is the District Magistrate or Collector who is familiar with the challenges of his or her geography and has considerable power to implement government schemes. Partnership is not something which comes easily to the upper tiers of government, which are used to dictating terms to lower tiers.

The spirit of cooperation needs to be supplemented by a culture of competition. This programme takes the principle of competitive federalism down to district administrations. Each district will be ranked on the focus areas which are disaggregated into easily quantifiable target areas. So as not to bias the rankings on historical achievements or lack of them, the rankings will be based on deltas or improvements. The rankings will be publicly available.

India's long history of a dominant state apparatus has led to an entrenched perception that government is the sole actor capable of and responsible for the transformation of India. The ADP

has opened its door to civil society and leveraged the tool of corporate social responsibility to form partnerships which will bring new ideas and fresh energy with boots on the ground from non-government institutions to join the “official” efforts. The force multiplier on outcomes from such participation is potentially massive.

One area which is being given serious attention is the collection of quality data on a real-time basis. Too often in India, data collection is delayed or lacking in quality which ends up leading to policymakers shooting in the dark. With continuously updated data dashboards, those running the programme on the ground can alter strategies after accurate feedback.

In a way, the ADP is a big pilot programme from reorienting how government does its business of delivering development. A decisive shift in the paradigm of governance is likely to finally fulfil the many broken promises of the past.

Dhiraj Nayyar is Officer on Special Duty and Head, Economics, Finance and Commerce, NITI Aayog. The views expressed are personal.

With limited resources and time, it is crucial for States to assess which skills policies will make the biggest impact

END

Impeachment saga: The biggest loser is the office of the Chief Justice of India

That the vice-president would reject the notice of motion of impeachment of the Chief Justice of India was a given. Not that there was any threat of an impeachment even if he had sanctioned it; the Opposition does not have the numbers. Still, the notice was an end in itself, not the means to one.

The vice-president has the powers to reject the notice. The admission of such notices happen at his discretion, and there can be no talk of him exceeding his powers. The rejection is on the grounds that the charges laid out in the notice do not constitute the proven misconduct, which can be one of the two grounds for the removal of a judge. The other is incapacity. The vice-president, who says he consulted constitutional and legal experts, including former secretary generals of the Lok Sabha and former chief justices of India, saw no grounds for the notice to be admitted. The CJI is free to allocate cases as “master of the roster”, he indicated, citing the Supreme Court’s own judgment to this effect. And with there being no “proven misconduct” or “incapacity”, his logic went, there is no constitutional basis for the notice to be admitted.

Could he have done things differently? For instance, should the vice-president have said that despite there being no basis, he was admitting the motion, which would entail the creation of a three-member panel to probe the charges laid out in the notice? That’s a tough question to answer, especially because even the admission of the notice could be seen as there being some merit to the charges (and also as a victory for the Opposition). Should the CJI have restricted his judicial duties in the meantime? That’s an equally tough question to answer.

As several legal luminaries have pointed out, while the current process of allocation of cases in the top court may be less than perfect (much like the current process of selecting judges is), an impeachment motion against the CJI isn’t the way to address the issue. They have also pointed out that the vice-president had to decide on the notice quickly because it involved the credibility of the Chief Justice of India and, by extension, the Supreme Court.

The rejection doesn’t mean the end of the story, though. With the Congress deciding to contest the vice-president’s rejection of the notice in the Supreme Court, the issue is only likely to become messier. There are no winners in this. The biggest loser is the highest judicial office in the land, which has now been well and truly politicised.

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RS chairman rejects motion against CJI

Mr. Naidu called it an internal “matter of the judiciary.”

“The allegations emerging from the present case have a serious tendency of undermining the independence of the judiciary which is the basic tenet of the Constitution of India.

“Considering the totality of facts, I am of the firm opinion that it is neither legal nor desirable or proper to admit the Notice of Motion on any of these grounds,” he said.

The decision comes just a day after Mr. Naidu consulted a host of officials including Attorney General of India K.K. Venugopal and retired Supreme Court Judge Sudarshan Reddy.

Noting that MPs were discussing the motion in the media, the Vice-President observed: “This act of the members, discussing the conduct of the CJI in the press, is against propriety and parliamentary decorum as it denigrates the institution of the CJI. I am also aware that there has been a spate of statements in the press that seem to vitiate the atmosphere. I thought I should, therefore, expedite my decision and end needless speculation.”

END

Master of the next steps

In an unprecedented move, seven Opposition parties finally initiated the process to impeach the Chief Justice of India (CJI), Dipak Misra. Vice-President, and Rajya Sabha Chairman, Venkaiah Naidu has rejected the motion. Whether the Vice-President can himself examine the merits of the impeachment motion in itself is debatable as this is the job reserved for the inquiry committee under the Judges (Inquiry) Act,1968.. The matter may soon be in the Supreme Court. And if it is, the CJI should not constitute a Bench to hear this petition if the credibility of our judiciary is to be preserved.

One charge against Justice Mishra pertained to the arbitrary use of his powers as 'master of the roster'. On April 11, a three-judge Bench headed by the CJI had given a judgment upholding absolute power of CJI in the constitution of benches. A similar order was passed by a five-judge Bench again headed by the CJI in November 2017, when for the first time in the Supreme Court's history, administrative powers were used within 24 hours to overrule a judicial order of a Bench, in this case headed by Justice J. Chelameswar. Another two-judge Bench of Justices A.K. Sikri and Ashok Bhushan is scheduled to hear Shanti Bhushan's petition later this week. Thus, Bench constitution is at the core of current crises and something must be done about it without attributing motives to the CJI.

Back to the court: on the impeachment controversy

"As a repository of constitutional trust, the Chief Justice is an institution in himself," said Justice D.Y. Chandrachud, who authored the 16-page April 11 order. Thus we are told not to question the CJI's decisions. But then by the same logic, is Rashtrapati Bhavan not an institution? Is the Prime Minister's Office not an important institution of our democracy? Is Parliament not the most important institution? If the answer to these questions is in the positive, then how come decisions by these high constitutional functionaries are routinely struck down by the judges of High Courts and Supreme Court?

In fact if men were angels, there would be no need to limit the powers of public officials through constitutional means. Judges too are humans like us and thus are fallible. Judges are our last resort against governmental authoritarianism and that's why they must be insulated from the governmental control. But similar protection at times may be needed against at least the 'administrative actions' of Chief Justices. Thus if civil liberties are seen to be under threat due to potential abuse of powers by Chief Justices, a review of earlier judgments like *Prakash Chand* (1998) that held the Chief Justice as an 'absolute' master of the roster should be urgently taken up.

Constitutionally speaking, the judiciary is not 'state' under Article 12. But in *Naresh S. Mirajkar* (1967), the apex court itself made a distinction between 'judicial' and 'administrative' powers of the court. Thus when the CJI acts in his 'administrative' capacity, his actions are certainly subject to fundamental rights, including the right to equality.

Right to equality includes right against arbitrariness. In *E.P. Royappa* (1973), the Supreme Court itself expanded the protection of equality when it observed that "From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch." In *Tulsiram Patel* (1985), the Supreme Court itself held that non-observance of the principles of natural justice too violates right to equality. Thus the CJI's participation in cases about his own powers has not gone well with those who believe in the fundamental rule of natural justice that 'no one shall be a judge in his own case'. His recusal could have enhanced his own credibility

and saved the judiciary from the crises.

Speaker must act as ‘reasonable man’

The Supreme Court Rules, 2013, framed under Article 145 of the Constitution, do state that CJI is master of rolls. But since constitution of Benches is an ‘administrative’ function, this function cannot be exercised at the CJI’s whims and wishes. Thus the cherry-picking in Bench constitution may not be violative of ‘the rule by law’ but is definitely contrary to the ideals of ‘the rule of law’. Spirit of law at times is more important than letter of law.

An interpretation accepting no limitations on the exercise of the powers of the CJI and justifying even power to act in an arbitrary manner means a re-writing of the entire jurisprudence developed by the Supreme Court on the exercise of ‘administrative discretion’. Isolated cases of even improper use of power should never be criticised, and the Vice President rejected the motion because of this. But if there is pattern in which Benches are being constituted, it is to be more closely examined.

In *Prem Chand Garg* (1962), the apex court held that rules made by the court violative of fundamental rights may be struck down as *ultra vires* of the Constitution. Thus if the rule of the CJI being master of rolls is used in an arbitrary manner, such a rule should either be read down or there should be safeguards built into it.

Certainly, all judges are equal and seniority has no bearing on the constitution of Benches. But then equality also means that senior judges be treated equally with junior judges. Their exclusion from all constitutional Benches has certainly sent the wrong signals. Since in the roster prepared by the CJI after the press conference by four senior-most judges, some subjects have been assigned to more than one judge, the CJI again decides on his own who gets which matters and thus has not in any way improved the situation in reducing his discretion. Moreover, all important matters have been reserved for the CJI.

The CJI yet again has this opportunity today which he should proactively use to bring in real reforms by amending the Supreme Court Rules on constitution of Benches. Any CJI would have a fairly good idea about the ideological positions of all the brother judges and therefore even if there is no malice on his part, he can always constitute a Bench with judges who are likely to go this way or that. This power therefore has a huge impact on the justice delivery system. In the wake of the current crises, some mechanism can be evolved to ensure that one individual does not have absolute power to make or unmake Benches. We may disagree with a number of judicial and administrative decisions of the CJI. But none of his actions can really amount to ‘incapacity or proved misbehaviour’, i.e. grounds of impeachment, and thus the rejection of the notice by the Vice-President.

Let the CJI himself come forward in leading the process of developing the mechanism that will exclude the remotest possibility of arbitrariness by future CJIs.

Faizan Mustafa is Vice-Chancellor, NALSAR University of Law, Hyderabad. The views expressed are personal

END

Back to the court: on the impeachment controversy

With the Rajya Sabha Chairman rejecting the notice given by 64 Opposition members for the impeachment of the Chief Justice of India, the focus has shifted to the presiding officer's power to admit or reject a motion. The Congress, spearheading the move, is planning to approach the Supreme Court. Section 3 of the Judges (Inquiry) Act, 1968, says the presiding officer may admit or refuse to admit the motion after holding consultations with such persons as he thinks fit, and considering the material before him. The law is open to interpretation on whether he can reject the motion on merits without sending the charges to a committee for investigation. A common sense view suggests the Chairman has to apply his mind to the nature of the charge. To argue that he should merely satisfy himself on the number of signatures appended to the motion and straightaway constitute a probe committee is unlikely to find judicial favour. However, it needs a court to delineate the contours of such an interpretation. Rajya Sabha Chairman and Vice-President M. Venkaiah Naidu held there is little merit in any of the five charges. He has considered the implications for judicial independence if an investigation were ordered into charges that he says are based on mere suspicion and conjecture. He has picked holes in the motion's wording, saying the signatories themselves are unsure of the veracity of the charges.

Speaker must act as 'reasonable man'

As for the legal foundation of his order, Mr. Naidu has cited the Supreme Court ruling in *M. Krishna Swami v. Union of India* (1992), which directed the Speaker (or Chairman) to act with utmost care, circumspection and responsibility and to keep equally in mind "the seriousness of the imputations, nature and quality of the record before him, and the indelible chilling effect on the public administration of justice and the independence of the judiciary in the estimate of the general public". He has also gone by *Mehar Singh Saini* (2010) to elaborate on the phrase "proved misbehaviour or incapacity", used in Article 124(4) of the Constitution, the ground for impeachment of a Supreme Court judge. What is possibly the main charge — that Justice Misra misused his control over the roster to assign cases selectively with a view to influencing their outcome — is indeed a serious one. But the question is whether impeachment is an option in the absence of concrete material to establish this charge. The Opposition is divided on initiating impeachment proceedings and there are two views within the Congress itself. Taking the matter to court may result in a judicial resolution, but it is unlikely to end the controversy over the functioning of the Supreme Court, an issue that has unfortunately assumed a very political and polarised character.

Attempts to undermine the investigation into a little girl's rape and murder must be resisted

The revival of the Trans-Pacific Partnership, sans U.S., must buttress the free trade debate

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Judicial quicksand

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The Indian judiciary now is stuck in an institutional quicksand, where every attempt to set things right seems only to deepen its crisis. Chief Justice Dipak Misra has, to put it mildly, made some questionable judgment calls that have led to concerns over the propriety of his conduct. Four of his colleagues went to the unprecedented step of calling a press conference, where the gravity of the implied accusation was combined with the kind of vagueness that made any follow-up difficult. A three-judge bench, including the Chief Justice, delivers a judgement on petitions regarding the death of Judge BH Loya. The judgement, not for the first time in the history of the Supreme Court, puts procedural decorum aside, to deliver a final closure in a case fraught with political implications.

The Congress party decides to file an impeachment motion that, above all else, lacks the courage of its convictions. For one thing, the party itself seemed divided on the motion. Without former Prime Minister Manmohan Singh and some senior leaders signing the petition, it lacked gravitas or credibility; it had the hallmarks of a Kapil Sibal too-clever-by-half manoeuvre. For another thing, the main premise of the petition rests not just on accusing the Chief Justice, but also by implication, at least four other judges of being accomplices in a game of bench-fixing. In effect, not just the Chief Justice, but a significant chunk of the Court was being implicitly accused without serious evidence. The timing of the motion seemed so overtly political, rather than principled, that it was easy to portray the impeachment motion as an intimidatory tactic to forestall judgements the Congress might not like.

Yes, it could be argued that the motion was to trigger an inquiry. But the threshold under which such an impeachment motion should be admitted is, rightly, for the sake of the independence of the judiciary, very high.
Meanwhile, Vice President Venkaiah Naidu's decision not to admit the impeachment motion again foregrounded our institutional quagmire. He has the statutory authority to reject the motion. He gave reasons for doing so. On balance, he arguably made the right judgment call. For, one important element of the case against Dipak Misra rests on the presumption that all those he is handpicking for particular benches are doing his bidding. This is what makes the charge against him more than merely one of exercising poor judgement. But this also means that it is not a charge that can be admitted lightly.

But Naidu's reasons will not convince the sceptics, in part because of his continual partisanship. They will argue that it was not his mandate to ascertain whether misconduct had been proved beyond reasonable doubt; it was merely to ascertain whether there were sufficient grounds for proceeding with a further inquiry. He should not have acted as an inquiry commission itself. This is exactly the same mistake, they will argue, the Supreme Court made in the Loya case; it acted as if it were the final commission of inquiry. So one side seeks vindication of suspicion, the other side requires certainty to proceed further.

A low threshold for the vindication of suspicion threatens judicial independence; total certainty before we can proceed gives no means for redressing legitimate concerns about the conduct of the Chief Justice.

Now we wait for a petition to be filed before the very Supreme Court whose credibility is being impugned. We are in a peculiar situation where every actor's credibility is so much in question that justice will not be seen to be done, even if the actors in this drama actually do the right thing. Each has now contributed to the decimation of the institution. The Chief Justice by always appearing to

be a judge in his own cause, the rest of the Court by being a divided house without the minimal ability to exercise principled leadership, the BJP for so plainly intimidating the judiciary over appointments, and now the Congress party for creating a precedent where impeachment motions are used all too lightly. The Congress forgot that if you target the king, you should better hit bull's eye, or all you leave behind is more collateral damage.

Meanwhile, there is a larger game going on. The Chairman rejects the motion in order to protect judicial independence. But the government has done its level best to break judicial independence. It is sitting on the recommendations for appointment to the Supreme Court and High Courts of the collegium led by the same Dipak Misra who is supposedly acting at the behest of government. So, appointments to the courts are stuck and have a cloud over them. The BJP's conduct gives more ammunition to those who believe that the government is trying to intimidate the judiciary.

Meanwhile high-profile cases of political violence, from Mecca Masjid to Naroda Patiya, seem to fall apart. Like so many other cases in the past involving riots and violence, the Supreme Court's ability to oversee justice goes for a toss. The Chief Justice continues unfazed in his bench constitution, oblivious to an elementary fact that credibility is not just a matter of claiming formal legal powers, but about exercising discretion with fairness. The Bar seems as politically divided as ever, and except for one or two honourable exceptions, no major lawyers can help overcome this crisis of credibility or partisanship; they are part of the problem rather than the solution. So the net result is this: The final arbiter of our constitution is now mired in ineffectiveness and partisanship. Who do you believe? We are in an institutional quicksand when we know that who you believe seems to depend on your political loyalties. The Court, instead of being a mediating institution, is now a divided and dividing institution.

Getting out of this quagmire will not be easy for the Supreme Court. The current Chief Justice may not have committed impeachable offenses, but has certainly exercised questionable judgment. Maybe we can hold our noses sufficiently long enough for the controversial Chief Justice to retire, and for the next one to initiate reforms and restore credibility. Whatever the rightness of rejecting the impeachment motion, the government could show some prudence by not stalling good appointments in the blatant manner it has done so far. It needs to show it is not out to control the judiciary. The Congress would do better to concentrate on how to politically defeat the BJP than create dangerous precedents based on half convictions. But we are in a quicksand. We can endure neither the Court's loss of legitimacy nor all the attempts being made to overcome it.

END

The third tier

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Political legitimacy arising from active participation of people in grassroots governance is regarded as a litmus test for democracy. On April 24, 1993, India took a decisive step in meeting that objective. The Panchayati Raj Act conferred constitutional status on Panchayati Raj Institutions (PRIs). Though there were long debates on local-level democracy in the Constituent Assembly, in its first 42 years, the republic's Constitution reposed trust in the two-tier form of government — PRIs found a mention only in Directive Principles of State Policy. The Panchayati Raj Act not only institutionalised PRIs as the mandatory third tier of governance, it transformed the dynamics of rural development by giving a say to a large section of the people — significantly, women — in the administration of their localities. Yet, the churn precipitated by the Act has largely remained unexpressed in national-level politics. There are very few channels that connect the grassroots leader to the politics at higher levels.

Nowhere is this more true than in the representation of women. Women constitute more than 45 per cent of the nearly three million panchayat and gram sabha representatives in the country. In contrast, women's representation in the current Lok Sabha is barely 11 per cent. It's easy to dismiss the women in panchayats as proxies for their male relatives. However, as social scientists have argued, the fact that women come forward to contest elections, attend panchayat meetings and sit with men of different castes and age groups is itself a step towards empowerment. PRIs free women from the compulsion of tailoring politics to male-dictated agendas.

At the same time, the democratic potential of the PRIs remains limited. Most states have merely completed the formality of devolving powers. They have not followed this up with effective devolution, especially with respect to funds. Ideally, the PRIs should be formulating their own plans and executing them. But they remain dependent on Central and state government funds. At many places, PRIs have become adjuncts to Central and state-level administrative agencies. As the country celebrates 25 years of the Panchayat Raj Act, it should also debate why the churn at the grassroots has not found expression nationally.

END

Electoral Bond Scheme 2018: Sale of Electoral Bonds at Authorised Branches of State Bank of India (SBI)

Ministry of Finance

Electoral Bond Scheme 2018: Sale of Electoral Bonds at Authorised Branches of State Bank of India (SBI)

Posted On: 24 APR 2018 3:34PM by PIB Delhi

Government of India has notified the Electoral Bond Scheme 2018 vide Gazette Notification No. 20 dated 02nd January 2018. As per provisions of the Scheme, Electoral Bonds may be purchased by a person, who is a citizen of India or incorporated or established in India. A person being an individual can buy Electoral Bonds, either singly or jointly with other individuals. Only the Political Parties registered under Section 29A of the Representation of the People Act, 1951 (43 of 1951) and which secured not less than one per cent of the votes polled in the last General Election to the House of the People or the Legislative Assembly of the State, shall be eligible to receive the Electoral Bonds. The Electoral Bonds shall be encashed by an eligible Political Party only through a Bank account with the Authorized Bank.

State Bank of India (SBI), in the 3rd phase of sale, has been authorised to issue and encash Electoral Bonds through its 11 Authorised Branches (as per list enclosed) w.e.f. 01.05.2018 to 10.05.2018.

It may be noted that Electoral Bonds shall be valid for fifteen days from the date of issue and no payment shall be made to any payee Political Party if the Electoral Bond is deposited after expiry of the validity period. The Electoral Bond deposited by an eligible Political Party in its account shall be credited on the same day.

Electoral Bond Scheme – 2018

Phase III: May 01-10, 2018

Authorized Branches of State Bank of India

Sl. No.	State	Name Of The Branch & Address	Branch Code No.	Existing / New
1	Delhi	New Delhi Main Branch, 11, Parliament	00691	**Existing**

		Street, New Delhi – 110001		
2	Gujarat	Gandhinagar Branch, I Floor, Zonal Office Sector 10 B Gandhinagar Distt:Gandhinagar,Gujarat Pin:382010.	01355	**Existing**
3	Haryana And Punjab	Chandigarh Main Branch, SCO 43-48, Banking Square, Sector-17B, Chandigarh, Distt: Chandigarh State: Chandigarh, Pin : 160017	00628	**Existing**
4	Karnataka	Bangalore Main Branch, Post Bag No.5310, St. Marks Road, Bangalore, District :Bangalore Urban, State: Karnataka, Pin : 560001	00813	**Existing**
5	Madhya Pradesh	Bhopal Main Branch, T.T.Nagar,Bhopal-462003, Bhopal, Madhya Pradesh, District : Bhopal, State: Madhya Pradesh. Pin : 462003	01308	**Existing**
6	Maharashtra	Mumbai Main Branch, Mumbai Samachar Marg Horniman Circle, Fort ,Mumbai, Maharashtra Pin : 400001	00300	**Existing**
7	Rajasthan	Jaipur Main Branch,P.B.NO.72, Sanganeri Gate Jaipur, Rajasthan District :Jaipur, State: Rajasthan. Pin : 302003	00656	**Existing**
8	Tamil Nadu	Chennai Main Branch,336/166, Thambuchetty Street, Parrys, Chennai. State: Tamil Nadu Pin : 600001	00800	**Existing**
9	Uttar Pradesh	Lucknow Main Branch, Tarawali Kothi, Motimahal Marg, Hazratganj, Lucknow, Uttar Pradesh District :Lucknow, State: Uttar Pradesh Pin : 226001	00125	**Existing**
10	West Bengal	Kolkata Main Branch, Samriddhi Bhawan 1, Strand Road, Kolkata, West Bengal, District :Kolkata. State: West Bengal. Pin : 700001	00001	**Existing**
11	Assam, Arunachal Pradesh, Manipur, Meghalaya,	Guwahati Branch, Pan Bazar, MG Road, Kamrup, Guwahati Pin: 781001	00078	**Existing**

	Mizoram, Nagaland, Sikkim, Tripura			

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DSM/RM/KA

(Release ID: 1530023) Visitor Counter : 559

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END

Notwithstanding recent growth spurt, endemic structural issues need to be addressed in a time bound manner in Assam: Finance Commission

Ministry of Finance

Notwithstanding recent growth spurt, endemic structural issues need to be addressed in a time bound manner in Assam: Finance Commission

15th Finance Commission is visiting Assam from 25th to 27th April 2018

Posted On: 24 APR 2018 1:56PM by PIB Delhi

The Fifteenth Finance Commission of the Government of India is visiting Assam, the gateway to the North East of India from 25th to 27th April 2018. The Commission will assess the state of the finances of Assam, its socio-economic challenges and understand the efforts of the State Government to tackle these. Assam, of late, has made visible strides in growth and socio-economic development, transcending its geographical and historical challenges. However, there are significant opportunities for accelerating the momentum in the State's health, educational and economic outcomes. Demographic diversities give rise to myriad socio-cultural conditions and contingencies offering developmental challenges of various forms. Notwithstanding recent growth spurt, endemic structural issues need to be addressed in a time bound manner.

During 3 day visit, the Finance Commission led by the Chairman Shri N.K.Singh, Members – Shri Shaktikanta Das, Dr. Anoop Singh, Dr. Ashok Lahiri and Dr. Ramesh Chand will have meetings with Chief Minister, Ministers and other officials of the state. Detailed presentations will be made on the finances of the State Government. The Commission will also meet leaders of various political parties, Representatives of Autonomous Councils, Representatives of Trade and Industry viz. Chambers of Commerce/Assam branch of FICCI, Assam Branch of Indian Tea Association, and other stakeholders to understand the opportunities and the challenges in the state. There will also be interactive session with Urban Local Bodies and Panchayati Raj Institutions.

Assam is the second state that will be visited by the Fifteenth Finance Commission, the first being Arunachal Pradesh. It is an integral part of the agenda of the Finance Commission to visit different States, understand their developmental requirements and their resource availability, and then firm up its conclusions, recommendations and Report.

Background :

Key Socio - Economic Indicators during 2016 -17

1. The economy of the state is primarily agricultural. As per Census 2011, about 50% of the total workforce still depend on agriculture. Even though the state is rich in terms of oil, gas and other natural resources, industrialisation and urbanisation remain limited.
2. Notwithstanding, the service sector has become important in the state's economy in the recent past.
3. Infant Mortality Rate (IMR) at 47 per 1,000 live births was higher than all India average (37 per 1,000 live births).
4. Maternal Mortality Rate is also much higher than the National Average.
5. Life expectancy at 64.7 years was lower than the all India average (68.3 years).
6. The literacy rate of Assam was 72.2 per cent against all India percentage of 73.
7. Decadal population growth (16.93 per cent) of the State was lower than that of the country (17.64 per cent).
8. Per capita income of INR 67,620 was lower than all India average of INR 1,03,870.

Commission to explore ways and means to enhance Per Capita Income of Assam

The Commission recognizes the special characteristics of Assam and notwithstanding acceleration in growth momentum; it will have to make enormous development strides to catch up with national averages particularly with respect to per capita income. It is a matter of concern that per capita income of Assam is significantly lower than All India average which itself is lower than other emerging markets. Commission, therefore, would seek to explore opportunity of what structural, administrative and other changes are necessary by way of augmenting resources of state and also its proper utilization.

The Finance Commission needs to make an in-depth Study of the recent developments and future possibilities of economic growth and development of Assam. This will be based on the various interactions and meetings that the Commission is scheduled to have in Assam during its visit.

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DSM/RM/AM

(Release ID: 1530018) Visitor Counter : 359

Read this release in: Assamese , Urdu , Hindi

END

Your Lordship

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The NDA government has segregated and returned for reconsideration of the Supreme Court Collegium the proposed appointment of Justice KM Joseph as judge in the apex court. As Chief Justice of India Dipak Misra has pointed out, it is within its rights to do so. Yet, the government's move in a fraught context rife with crucial questions raises worries about the health of the institution of the judiciary and its independence from the executive. The government has singled out Justice Joseph from the two recommendations made by the collegium in January after sitting on them for more than three months — the segregation is unusual, as was the delay. Neither can be explained away by the selective invoking of the so-called seniority or diversity norms in appointments to the higher judiciary. As Uttarakhand Chief Justice, K M Joseph had quashed the imposition of President's Rule by the Centre in 2016, restoring the Congress government in the state. If the bid to stall his elevation is read as an unsubtle signal to him, and even more disquietingly, to all judges, that a judge has to pay for an inconvenient verdict, the government has itself to blame.

The ball — the opportunity to defend his institution — is now in CJI Misra's court. At the very least, the government's moves, given the questions they raise, need to be considered institutionally, in a meeting of the collegium. So far, CJI Misra appears to have discounted the serious concerns raised by his brother judges in the recent past regarding the executive's bid to control or dominate the judiciary. In January, four senior-most SC judges held an unprecedented press conference to say that all is not well with the court. In March, Justice J Chelameswar wrote a letter flagging the government's stalling of the elevation of a judicial officer to the Karnataka HC despite the Collegium's reiteration of his candidature. In April, Justice Kurian Joseph wrote to the CJI about a threat to the "very life and existence of the institution". Most recently, hours before the government cleared one Collegium appointment and held back another, Justices Ranjan Gogoi and Madan Lokur asked CJI Misra to call a "full court" to discuss its future. By not responding to the anxieties expressed by senior judges, CJI Misra has only strengthened the unfortunate impression that he is not willing to stand up to attempts to subdue the court.

In 2014, not long after the NDA assumed power at the Centre, the then CJI, RM Lodha, had written to the Union Law Minister to express his disapproval of the "unilateral" segregation by the government of the appointment of Gopal Subramaniam, former solicitor general who was outspoken on Gujarat 2002, from a panel of four names recommended by the Collegium for elevation as SC judges. "In future such a procedure… should not be adopted by the executive", he wrote. The court has a proud legacy of protecting its own dignity and independence. CJI Misra must live up to it. Not just his own legacy, the integrity of the institution he heads is at stake.

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Unpersuasive: on Centre's arguments against elevating Justice Joseph

The **Centre’s objections to the elevation** of Uttarakhand High Court Chief Justice K.M. Joseph to the Supreme Court are unpersuasive and raise suspicion whether his appointment is being blocked for extraneous reasons. Basically, there are two broad reasons proffered for freezing the appointment. First, that Justice Joseph is much too junior in the all-India list of judges, with 11 Chief Justices ranked above him. Second, that there is an imbalance in the regional representation in the Supreme Court, something that his appointment will only skew by adding another judge from Kerala. Neither of these reasons holds good. Seniority is not the sole consideration while elevating a High Court judge to the apex court. *Inter se* seniority is a consideration when a puisne judge is made a Chief Justice, but it is not sacrosanct in elevation to the Supreme Court. There are quite a few instances of senior judges and Chief Justices being overlooked in favour of a more deserving candidate of outstanding merit. Some of these decisions may evoke criticism, but there is no laid-down norm under which the Supreme Court collegium should draw fresh talent for the highest court only in the order in which an all-India seniority list of High Court judges has been drawn up. That merit is and has been a factor in selection addresses the other argument, that Kerala will have two Supreme Court judges were Justice Joseph to be appointed. There was a time when Kerala had three judges in the apex court; also, other courts have been routinely ‘over-represented’.

‘Merit trumps seniority in elevation to Supreme Court’

While it is desirable that regional imbalances and under-representation are not glaring, this cannot be cited as a factor to shoot down the candidature of a person otherwise qualified and validly recommended. Not surprisingly, the Centre’s decision has been accompanied by suspicions and allegations that Justice Joseph is being targeted for his 2016 judgment quashing the proclamation of President’s Rule in Uttarakhand. What happens from now on will depend on how the collegium reacts. In the light of its strong recommendation that Justice Joseph is “more deserving and suitable in all respects than other Chief Justices and senior puisne judges”, it will be no surprise if it reiterates the recommendation. Then the government is bound to abide by the collegium’s decision. In that event, the Centre should not prolong the controversy further by seeking to block his elevation again. There is a strong perception, even within the judiciary, that the government is much too slow when it comes to approving judicial appointments. A conflict between the judiciary and the executive over particular appointments is not in the public interest. Besides allowing Justice Joseph’s appointment to go through, efforts must be made to finalise a revised memorandum of procedure for appointments so that the case of one judge does not turn into a flashpoint for a sustained conflict between the two branches.

On Kathua, the BJP is presenting one narrative to Jammu, another to the rest of India

The revival of the Trans-Pacific Partnership, sans U.S., must buttress the free trade debate

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Supreme Court at the crossroads

On April 24, 1973, two events occurred that have united India ever since. Sachin Tendulkar was born in Bombay, and in Delhi the Supreme Court delivered its **verdict in *Kesavananda Bharati***, by a narrow 7-6 majority. Tendulkar would take time to make an impact, but *Kesavananda* had an immediate fallout.

The next day, on April 25, 1973, three of the seven judges who delivered the majority judgment which went against the government's position were superseded for the position of Chief Justice of India. Justices J.M. Shelat, K.S. Hegde and A.N. Grover were superseded by Justice A.N. Ray, who had ruled in the government's favour. Justice Ray took over as Chief Justice on April 26, 1973.

The supersession of 1973 set the stage for the **Emergency of June 1975**. During the Emergency, the tamed Supreme Court went on to rule that the very right to life, under Article 21 of the Constitution, stood suspended. The court also sought to review its own judgment in *Kesavananda Bharati*. The Emergency era saw a cowering craven court fail to stand up for citizens against the state when it mattered. It failed to act as a brake on despotism.

K.M. Joseph is 'senior-most High Court Chief Justice'

This week, 45 years to the day, on April 25, 2018, the government has chosen to appoint Indu Malhotra to the Supreme Court and has for the moment chosen not to appoint Justice K.M. Joseph. His name had also been recommended along with that of Ms. Malhotra, by the collegium of five senior judges of the Supreme Court. The resolution recorded: "The collegium considers that at present Justice K.M. Joseph, who hails from the Kerala High Court and is currently functioning as Chief Justice of the Uttarakhand High Court, is more deserving and suitable in all respects than other Chief Justices and senior puisne Judges of High Courts for being appointed as Judges of the Supreme Court of India. While recommending the name of Justice K.M. Joseph, the collegium has taken into consideration combined seniority on all-India basis of Chief Justices and senior puisne Judges of High Courts, apart from their merit and integrity."

Justice Joseph's independence and his indifference to political consequences were amply demonstrated when, as Chief Justice of Uttarakhand, he struck down a proclamation of President's rule in the State in 2016. He comes from an illustrious legal family. His father, Justice K.K. Mathew, was a judge of the Supreme Court. He is the senior-most judge from Kerala, which by tradition sends a judge or two to the Supreme Court. The impending retirement of Justice Kurian Joseph later in November this year would have made Justice K.M. Joseph a suitable successor. Despite meeting all the requirements for appointment to the Supreme Court, despite the court through its collegium having recommended his name, he seems to have antagonised the powerful who want to retaliate. In a profession where peer review is a continuous process, there have been no doubts whatsoever expressed about Justice Joseph's integrity or competence.

Having a collegium of SC judges to allocate cases will be a recipe for chaos: Attorney General

Nevertheless the government of the day has now asked for a reconsideration of the recommendation made in this case by the collegium. The government says, "At this stage, elevation of one more judge from Kerala High Court as a Judge of the Supreme Court of India does not appear to be justified as it does not address the legitimate claims of the Chief Justices and Puisne Judges of many other High Courts." Shorn of legalese, the letter primarily makes two points. It says that Justice Joseph is not the senior-most judge in the all-India seniority list. Second, it says that the Kerala High Court already has one Supreme Court Judge and three Chief

Justices of High Courts representing it. Both arguments are fallacious.

Countrywide seniority is taken into account but is not the sole determinative factor. Second, Kerala might currently have four senior judges at an all-India level, but will soon be down to two, with two retirements scheduled this year. In fact the Law Minister's objections are best answered in this case by the Supreme Court judgment in the 1998 presidential reference which has held that "Where, therefore, there is outstanding merit the possessor thereof deserves to be appointed regardless of the fact that he may not stand high in the all India seniority list or in his own High Court. All that then needs to be recorded when recommending him for appointment is that he has outstanding merit. When the contenders for appointment to the Supreme Court do not possess such outstanding merit but have, nevertheless, the required merit in more or less equal degree, there may be reason to recommend one among them because, for example, the particular region of the country in which his parent High Court is situated is not represented on the Supreme Court bench. All that then needs to be recorded when making the recommendation for appointment is this factor."

Unpersuasive: on Centre's arguments against elevating Justice Joseph

The earlier recommendation of the collegium on January 11, 2018, is clear about Justice Joseph's merit and suitability. Nothing has surfaced in the past three months to retract from that position. The government, while setting out its reasons asking for a reconsideration of the collegium's recommendation, has also not made any case on integrity or competence. All that the government points to is a perception of regional imbalance and an overlooking of seniority. It must be pointed out that in the current Supreme Court, at least five judges (including two appointments from the bar) are from the Bombay High Court, at least three are from the Delhi High Court. To say that Kerala can't have two judges on the court is to stretch a point.

Both objections seem to have been taken with a view to somehow stop or delay Justice Joseph's elevation to the Supreme Court. Even if there is some substance in the objections, they can be remedied at a later date. The issue is whether the judiciary can permit any appearance of retaliation upon its brethren by an apparently vengeful executive. The correct course of action now available to the Supreme Court is to reiterate its recommendation after reconsideration of the proposal in the light of the government's latest letter.

In the Third Judges case, it has been held that "if after due consideration of the reasons disclosed to the Chief Justice of India, that recommendation is reiterated by the Chief Justice of India with the unanimous agreement of the Judges of the Supreme Court consulted in the matter, with reasons for not withdrawing the recommendation, then that appointment as a matter of healthy convention ought to be made". The crucial words in this paragraph are "unanimous agreement". Thus if even one of the five has a rethink, the government will have succeeded in its attempt to block Justice Joseph.

A house divided against itself cannot stand. In the Mahabharata, as long as the five Pandavas stood together, they ruled over Indraprastha. Even if Yudhishthira, the eldest Pandava, erred in dicing with fate, it was only by following the path of dispassionate duty that all the Pandavas ended up with the victory at Kurukshetra. The judges may well remember that the Supreme Court's motto itself is *Yatho Dharmastato Jayah*. Victory lies on the side of Dharma.

Sanjay Hegde is a senior advocate of the Supreme Court

END

The Naga’s right to know

From driverless cars to smart speakers, ieDecode demystifies new technology

Most Indians are unaware of the history, politics, cultures and economics of the Northeast — and most probably, couldn’t care less. Still, the nation must know some crucial aspects of the history and politics of this region that impact the working of Indian democracy. Without going into the finer details of the long-drawn Naga political issue, let’s just focus on one aspect of the Framework Agreement that was signed between the government of India and the NSCN (IM) on August 3, 2015. This agreement has been hailed as the precursor to peace in conflict-ridden Nagaland, in Naga-inhabited states of Assam, Manipur and Arunachal Pradesh. And, it could well be so. However, there is another dimension to the Agreement, which has not received attention.

Except the signatories of this Agreement — the representatives of the GoI, the NSCN (IM) and those involved in the negotiations — nobody knows its contents. Because the contents have not been disclosed till date, there are only assumptions, conjectures, speculations, suspicions, a whole lot of propaganda and one suspects, a lot of lies too. In the absence of proper disclosures, in the absence of transparency, this is natural.

There are two shades of opinion in Nagaland on the Agreement. One maintains that it is not necessary to disclose the contents because the leaders know what they are doing and that the people have faith and trust in them. This opinion is typical of the general tribal thinking that leaders know what they are doing and must not be questioned. Because the collective is prioritised in tribal communities, “leading” is perceived to be the sole prerogative of the leadership. This also means that dissent is not encouraged. To question is generally considered an act of revolt against the leadership. Most of the consensus the tribal communities boast of is basically achieved through coercion.

The other view insists that the contents of the Framework Agreement must be revealed for the public to discuss them — after all, the Agreement is about the Naga people and, therefore, fundamental to their future. This opinion clearly reveals a line of thinking tribal communities are normally not comfortable with, as here the individual demands the right to know how her future is being designed. The individual here wants to participate, or at least have a say, in designing her future. Clearly, the debate around the Agreement underscores the clash between the individual and the collective and the clash of the traditional systems with the modern concepts of democracy.

Nagaland was constituted as the 16th state of the Indian Union in 1963 under the Constitution of India. So, whatever is decided for the people of this state must be in the knowledge of the people, which means the people of Nagaland have the right to information. Therefore, for the GoI to be a party to this scheme of concealment is unconstitutional and undemocratic. While it is true that the Centre’s interlocutor has been in talks with numerous NGOs and civil society groups, these consultations still do not counterbalance the non-disclosure of the Agreement’s contents. Under a Constitution that mandates one-person-one-vote, in other words, prioritises the individual, can collectives decide for individuals? After all, citizens have not voted for NGOs or civil society groups and have not surrendered their decision-making rights to them. Let’s not bring in Article 371 (A) here because the NGOs and civil society groups in Nagaland are not traditional bodies — most of them have been formed since the 1990s.

These questions underscore the numerous lines of thinking emerging in the Naga society, which are the consequences of modern education and the explosion of technology. They also underline the aspirational Naga, young and old, venturing into spaces beyond the traditional. This is not to suggest that the aspirational Naga has abandoned her cultural moorings, but to point out how far

the Naga society has moved into the national and global terrain and how the generational gap pulls her back to the confines of the village, so to speak.

The view that the said the Agreement's contents must be disclosed persists because of the need to know whether the aspirational Naga's interests are being addressed in it. This is crucial because like any tribal society, however much culture, customs and traditions are crucial, so are the imperatives of surviving in a world that has moved light years away from the crucibles of our ancestors, who survived on subsistence economy, and now us, who survive on doles from the central government and in fear of guns. And this necessarily translates into ownership of the right to information and the right to be heard. Indubitably, there are generations of Nagas who have been breastfed by different, broader and all-encompassing concepts and ideals of democracy, freedom, liberty, justice, equality and fraternity that are not the leitmotifs of traditional tribal communities. The aspirational Naga lives in a world that has no resemblance to the world of her great-grandfather and there is always the fear that she will be pushed back into that world.

The question is whether the GoI is pushing back the Naga to her great-grandfather's world or empowering and enabling her to travel, survive and thrive in a world that all Indians aspire to, by remaining silent on the contents of the Framework Agreement. Keeping in mind that looking forward is not the same as abandonment of cultural moorings, would India understand these dichotomous opinions and take a stand on them? While the politics of the Naga issue has always received attention, it is the economic trajectory the ordinary Naga is focused on. And, this is one reason, downplayed and disregarded – a settlement has eluded the Naga problem for decades. We need to know if the Framework Agreement addresses this.

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People as auditors: on social audits

The breakdown of institutions has underlined the fact that democracy — and especially public funds — need eternal public vigilance. But in India, the elites close ranks to neutralise voices of dissent and alarm, thus preventing public vigilance.

Democratic governance needs the citizen to be legally empowered to ask questions, file complaints, and be a part of the corrective process. Social audits, as they have begun to evolve in India, can potentially become a powerful democratic method by which transparency can be combined with an institutionalised form of accountability to the people.

In the mid-1990s, the Mazdoor Kisan Shakti Sangathan (MKSS) experimented with, and began to conceptualise, village-based Jan Sunwais (public hearings) on development expenditure. These helped establish the Right to Information (RTI) as a potent, usable people's issue and, in parallel, the institutionalised form of social audits.

Information is empowering

In a Jan Sunwai campaign, organised in five different development blocks of central Rajasthan, people learnt by doing. They realised that information is at the core of their empowerment. The process of verification, inquiry and auditing of records was demystified. Public readings of informally accessed development records had dramatic outcomes. As the names were read out from government labour lists, the responses were immediate and galvanised the people. Information about payments made to dead people and non-workers propelled residents to testify in the Jan Sunwai. These included serving government and armed forces personnel and names randomly copied in serial order from electoral lists. Even animals absurdly enough found their way into the lists of workers. Unfinished buildings without doors, windows or a roof were shown as audited and 'complete'. Ghost names and ghost works were exposed. Fake development works paid for and 'completed' on paper enraged local residents.

The people made four sharply focussed demands and circulated them in a pamphlet: full and open access to records of development expenditure; the presence and accountability of officials who are responsible to answer people's questions; the immediate redress of grievances, including the return of defalcated money to its intended purpose; and mandatory 'social audits' .

Amitabh Mukhopadhyaya, then an officer of the IA&AS, who visited, watched and contributed to the architectural growth of the process till he passed away a year ago, remarked that this was "audit returning to its roots": the word audit comes from the Latin word *audiere,* which means "to hear". The Jan Sunwai facilitated the reading of information and recorded the people's response. The effective institutionalisation of this platform could be a fundamental breakthrough in the attempt to give people and communities real monitoring powers. One of the defining slogans of the RTI movement that emerged from these Jan Sunwais and people's agitations — "*hamaara paisa, hamaara hisab*" (our money, our accounts) — succinctly encapsulated the concept of a social audit.

The RTI Act brought into effect the first prerequisite for social audits — giving citizens access to government records. The last 13 years of its use have demonstrated its salutary effect, but also made it obvious that information itself is not enough. Contemporary discourse on the RTI reflects frustration when ordinary people are armed with information but are unable to obtain any redress. The social audit places accountability in the centre of its frame, and transfers the power of scrutiny and validation to the people: a citizen-centric mode of accountability.

The power of social audits

The social audit is conceptually simple. Information is to be proactively shared amongst people so that they can " performance audit" a service or programme, from planning, to implementation and evaluation. This is, however, easier said than done. An independent facilitation structure needs to be set up, fleshed out, legally empowered and mandated to ensure that social audits are conducted. The relationship between the powerful and the powerless has to shift from patronage to rights, and from inequality to equality, making the right to question sacrosanct. Specific methods of sharing information, recording comments and acting on findings have been worked out. They now need to be acted upon.

The Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) was the first law to mandate social audit as a statutory requirement. However, even within the MGNREGA, social audits made painfully slow progress. They faced their most trenchant opposition in Rajasthan, where the concept was born. Elected representatives and officials reacted with intimidation, violence and pressure on the political leadership to stall and neutralise the process. The notable exception was undivided Andhra Pradesh which institutionalised social audits and drew significant positive outcomes. There have been innovative efforts in States like Sikkim, Tamil Nadu and Jharkhand. Nationally, institutionalised social audits have begun to make real progress only recently, with the interest and support of the office of the Comptroller and Auditor General (CAG), and the orders of the Supreme Court. In what was a social audit breakthrough in 2017, Meghalaya became the first State to pass and roll out a **social audit law** to cover all departments.

The Office of the CAG developed social audit rules for the MGNREGA in 2011, conducted a performance audit in 2015, and finally a year later formulated social audit standards in consultation with the Ministry of Rural Development — the first time in the world. If these are followed, it can be ensured that the social audit process is viable, credible and true to first principles of social accountability.

The Supreme Court has recently passed a series of orders to give social audits the robust infrastructural framework they need. Citing the statutory requirements in the MGNREGA and the National Food Security Act, the court has ordered that the CAG-formulated Social Audit Standards be applied to set up truly independent state-supported State Social Audit units. It has also ordered that social audits be conducted of Building and other Construction Workers Cess, and the implementation of the Juvenile Justice Act. Social audits, if properly implemented, will help address the impunity of the system in delivery and implementation.

The current dispensation makes a cursory mention of social audits in its manifesto. But there has been no delivery on legal accountability frameworks such as the Lokpal Bill and the Whistle Blowers Protection Bill. The system of social audits needs synergetic endorsement and a push by multiple authorities to establish an institutionalised framework which cannot be undermined by any vested interests. It is now an opportune time for citizens groups to campaign to strengthen social audits, and make real progress in holding the political executive and implementing agencies to account.

Nikhil Dey and Aruna Roy are social activists and are founder members of the MKSS

YES | Syed Ata Hasnain India risks its national security with low allocations to defence spending Syed Ata Hasnain For a developing country that is

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Saving our children

From driverless cars to smart speakers, ieDecode demystifies new technology

We have all woken up to a WhatsApp forward from that relative or friend with whom we are hardly in touch. These forwards typically tout inaccurate claims, awkward jokes or politically incorrect statements designed to stir controversy. We roll our eyes, and although we may not forward it ourselves, we do precious little to correct the inaccuracies.

There are hundreds of such messages and other “information” circulating on social media and the internet today. Much of this is due to the fact that internet usage in the country has grown exponentially in the last decade. Cheap smartphones and affordable data plans ensure that we are always connected. We now have over 450 million internet users in the country and the largest number of Facebook users in the world.

But connectivity is a double-edged sword. While on the one hand, it means we have a huge resource of information at our fingertips, on the other, with so much information available to us, it becomes difficult to sift through all of it to determine what is accurate and what is not. Often, “fake news” has serious repercussions, especially on the health of our children.

Take for instance what happened last year during the measles-rubella (MR) vaccination drive in Kerala. Myths related to the MR vaccine began to spread over WhatsApp. This led many parents to keep their children home from school so they would not be vaccinated. There were also attacks on health workers who were working to provide vaccines to children in those districts. And all of this was based on rumours that were demonstrated to be completely false.

Of course, this challenge existed before the age of social media. There have always been rumours circulating around vaccines — even when I worked on the pulse polio drive back in the 1980s. But the rumours then were usually locally contained. Now, because of the enormous reach of the internet, rumours can spread far and wide in no time, and these rumours are much harder to predict, monitor, and counter.

So, how do we tackle this phenomenon? The first step is to get the facts straight. It is a fact that immunisation is one of the most effective and affordable modern health interventions. Vaccination allowed us to eradicate smallpox, a disease that once killed millions. In 2014, polio was eliminated from India in what was a hailed as a major public health success. Vaccines save the lives of between 20 and 30 lakh children every year around the world. If we pay heed to rumours and stop vaccinating our children, diseases that were eliminated could resurface.

It is also a fact that before vaccines are rolled out, they undergo years of rigorous scientific evaluation. Only after vaccines are found to be safe and highly effective are they included in a country’s national immunisation programme. We as a nation have benefited enormously from immunisation.

Recently, the Government of India has ramped up immunisation efforts through the Universal Immunisation Programme (UIP) and the Mission Indradhanush initiative. Since 2014, four new vaccines that protect children from potentially fatal diseases — including pneumonia and diarrhoea, the leading infectious causes of child death — have been introduced into the UIP. Mission Indradhanush has already vaccinated over 2.6 crore children, with a focus on rural and urban slums. The aim of the programme is to reach 90 per cent of children in this vast country with live-saving vaccines by the end of this year.

We need to communicate these facts clearly and effectively. Trust is the key to the success of any public health programme. Factual, evidence-based messages should come from local government, community leaders, and parents. Local leaders and families need to share the evidence with their communities, listen to and address concerns that people may have.

The media, too, has a critical role to play. If the media succumbs to the temptation of sensationalism without evidence and facts, inaccurate messages will spread further and gain credibility. The media has a solemn responsibility to report facts about immunisation in an accurate, fair, and professional manner.

And finally, as citizens, we need to step up and take a stand. Only when we, as individuals, educate ourselves on important public health issues like immunisation — and encourage others to do the same — will we be able to stop the spread of misinformation. We as parents and citizens are responsible for verifying important information related to the health of our children that we come across on WhatsApp and the internet.

When we receive that WhatsApp forward, let's all stop a minute and think. We need to ask ourselves: Is this information vetted? Are these legitimate sources? Are these messages trying to sensationalise or incite fear without using any facts? We can stop the spread of misinformation if we question what we read, and encourage others to do the same. It's our responsibility to take a stand against fake news for the success of our public health programmes. The lives of our children are at stake.

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