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Source : www.thehindu.com Date : 2023-08-01

IN ARTICLE 370 HEARING, THE ORIGINAL TEXT AND SPIRIT COUNT

Relevant for: Indian Polity | Topic: Indian Constitution - Amendments, Schedules, and Important Articles

August 01, 2023 12:16 am | Updated 08:22 am IST

‘At stake in the case is not only the bare relationship that the Constitution establishes between the Union and the States but also the sanctity attached to the various subtleties in this relationship’. File | Photo Credit: Sushil Kumar Verma

Tomorrow, August 2, the Supreme Court of India will begin hearing oral arguments in the case concerning Article 370 of the Constitution. The changes made to Article 370 through measures that commenced with a presidential order issued nearly four years ago, on August 5, were, by all accounts, seismic in proportion. Amendments were made to make applicable the entirety of India’s Constitution to Jammu and Kashmir (J&K). The State was also sundered into two Union Territories: J&K and Ladakh.

These decisions were made at a time when the State was under President’s Rule with no elected Legislative Assembly in place. Both in the lead up to the events and in the months following them, sweeping limitations were placed on civil liberties in the region. But the Court has already made it clear that what it will consider is not the consequences of the measures adopted but their legality. In other words, the question that it will strive to answer is whether as a matter of law the decisions made on Article 370 are ultra vires the Constitution.

The Indian Independence Act, 1947, which established the independent dominion of India, allowed the Government of India Act, 1935, to serve as an interim constitution until the country adopted its own. The statute permitted princely States to accede to India by executing an instrument of accession. In the case of J&K, the instrument came with qualifications that were ultimately written into Article 370.

These caveats stipulated that Parliament could legislate for J&K only over matters concerning external affairs, defence, and communications. Where Parliament intended to legislate over areas otherwise provided for in the instrument of accession, it could do so by consulting the State government. But where it proposed to enact laws beyond the agreed subjects, it required additional ratification by the State’s Constituent Assembly.

But after 1957, when J&K’s Constitution came into force, its Constituent Assembly was disbanded and replaced by a Legislative Assembly. Article 370, however, remained unaltered. Its chief drafter, Gopalaswami Ayyangar, had described the State Constituent Assembly’s recommendation, as mandated by clause (3) to Article 370, as a “condition precedent” to any

effort at abrogating the provision.

Now, with the Constituent Assembly disbanded, this clause had, for all practical purposes, become nugatory. Thus, Article 370 came to be seen, together with the State's new Constitution, as the only means of governing J&K.

When changes were made to alter this arrangement the Union government seemed quite conscious of the limitations within the existing text of Article 370. Therefore, it chose to look elsewhere, specifically at Article 367. Nestled inside a bunch of miscellaneous provisions in Part XIX of the Constitution, Article 367 comprises a set of general rules for interpreting the Constitution. It was this Article that the President's order on August 5, 2019, amended with a view to transforming the existing status of J&K.

The President achieved this by adding a new clause to Article 367, which stipulated that wherever the term "Constituent Assembly of the State" was used in Article 370, it would now refer to the "Legislative Assembly of the State." As a result, the basic thrust of Article 370 was abrogated, without complying with the precondition that Ayyangar thought obligatory.

Consider the consequences: with J&K under President's Rule, the Governor came to act not only as the State's Legislative Assembly but also as its Constituent Assembly. Buoyed by this new position, the President followed his decision with a declaration under Article 370(3) that with effect from August 6, 2019, "all clauses of the said Article 370 shall cease to be operative." And the new Article 370 proclaimed that all provisions of the Constitution would apply to J&K.

The President's order no doubt asserts that it was made with the concurrence of the "government of the state of Jammu and Kashmir." But seeing as the State was under President's Rule, that assent was made by J&K's Governor. In other words, the Union government was effectively assenting to its own decision, and, in this case, a decision with far-reaching consequences, without so much as consulting — let alone securing the concurrence of — the State's democratically elected representatives. This, the petitioners in the Supreme Court say, ought to be regarded as a colourable exercise of power.

In the petitioners' argument, representative democracy is a basic feature of the Constitution. Any interpretation of the Constitution must strive, they say, towards enhancing this value. What is more, even the framers of Article 370, they add, were of the view that any overriding of the provision can only be done through the procedure contemplated in clause (3), that is with the concurrence of the State's Constituent Assembly. Once the Assembly stood disbanded, this option ceased to exist.

The Union, for its part, argues that this is not the first time that different provisions of the Constitution have been made applicable to J&K. There have been numerous instances of presidential orders made through the erstwhile Article 370(1)(d), by securing the concurrence of the State government wherever necessary.

But, as the petitioners point out, there is a difference here, and this might well be where the case turns. Previous presidential orders, including the order introducing the controversial Article 35A, were made without altering the text of either Article 1 or Article 370 in any manner. This is critical because on a conjoint reading of clauses (c) and (d) of Article 370(1), what seemed to follow was that the President could make applicable to J&K, "such of the other provisions of the Constitution" — i.e., provisions other than Articles 1 or 370 — with modifications or exceptions as deemed necessary.

No doubt, the President's order on August 5, 2019, only alters the text of Article 367. But as a

consequence it upsets the existing text of Article 370, something that had up until this point never been attempted. By amending Article 370 through changes made to Article 367, the petitioners claim that the Union has done indirectly what it could not have done directly.

India's Constitution establishes a system of governance, where power and authority are divided between the Union and the States. The political scientist Louise Tillin has described this balance as representing a form of asymmetric federalism, where some States enjoy greater autonomy over governance than others, a feature reflected in various constitutional provisions, especially in Articles 371 to 371J.

The Supreme Court has routinely described federalism as representing an essential component of the Constitution. Therefore, when arguments are heard on the validity of the decisions made on Article 370, the Court will have to be guided not only by the text of the provision's original version but also by the spirit that pervades through the document's basic structure.

How arguments play out in court and how the Court ultimately decides on the legality of the President's order will have a deep bearing on the future of our constitutional law. The Indian Constitution brims with moral values. It also houses a series of procedural minutiae. To that end, the Court might want to ensure that fidelity is maintained both to these moral values and to the systems and processes that make up the administration of the country's laws. At stake in the case is not only the bare relationship that the Constitution establishes between the Union and the States but also the sanctity attached to the various subtleties in this relationship.

Suhrith Parthasarathy is an advocate practising in the Madras High Court

Source : www.thehindu.com Date : 2023-08-02

SUPREME INDICTMENT: ON MANIPUR CRISIS AND THE SUPREME COURT OF INDIA'S CENSURE

Relevant for: Indian Polity | Topic: State Legislatures - structure, functioning, conduct of business, powers & privileges and issues arising out of these

August 02, 2023 12:20 am | Updated 12:20 am IST

The Supreme Court has pulled up the Manipur government for its "lethargic" investigations into the ethnic violence in the sensitive border State that began on May 3 and which has still not been doused. Pointing out that arrests have been "few and far between", in the context of around 6,500 first information reports filed in relation to the violence, the apex court has asked for more details of the progress in police action, and ordered the personal presence of the Manipur Director General of Police during the next hearing on August 7. Questioning the State police's capability to investigate these cases, the Court noted that there was a complete breakdown of law and constitutional machinery in the face of mob violence. Two women who were paraded naked and raped by a mob have pleaded their lack of trust in the investigation by the police and the Central Bureau of Investigation. It was the circulation of a video clip that captured the horrific violence these women were subjected to that prompted the Court's intervention after weeks of unabated violence and the brazen partisanship of the Manipur government. More such cases have surfaced, and the Court has now proposed a Court-constituted investigation. Manipur Chief Minister N. Biren Singh has no leg to stand on after this censure by the highest court in the land, but continues to remain in office with a total lack of accountability because the Bharatiya Janata Party (BJP) is determined to protect him for political reasons.

The history of communal clashes in India suggests that mob violence for a prolonged period is possible only with the connivance of the state. In the case of Manipur, it is more than evident. Bringing perpetrators to book is far more tedious and often a frustrating process compared to taking swift preventive police action at the first sign of trouble. In Manipur, far from a swift response to prevent escalation, the police allegedly facilitated the mob violence. Police personnel who failed in their duty or connived with mobs should face the full force of the law. Also, there must be a strong message from the country's political leadership. Sadly, the attempt by the ruling BJP has been to deny the gravity of the Manipur situation by comparing it with isolated crimes in Opposition-ruled States. The Court has denounced that claim while underscoring the gravity of the situation in Manipur. A team of 21 leaders of the Opposition grouping, INDIA, that visited the State is scheduled to meet President Droupadi Murmu on Wednesday. The grouping should also agree to a discussion in the Rajya Sabha even if its demand for a prior statement by the Prime Minister is not met. That will be an opportunity for INDIA to present its findings to the country.

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Manipur / judiciary (system of justice) / Bharatiya Janata Party / unrest, conflicts and war / police / investigation / politics / Rajya Sabha / parliament / arrest

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Source : www.thehindu.com Date : 2023-08-02

BUS RIDE TO EQUALITY, THE WHEELS OF CHANGE IN KARNATAKA

Relevant for: Indian Polity | Topic: State Legislatures - structure, functioning, conduct of business, powers & privileges and issues arising out of these

August 02, 2023 12:08 am | Updated 12:08 am IST

“The labelling of the policy as a ‘freebie’ mischaracterises the measure and overlooks the socio-political framework where it operates” | Photo Credit: K. MURALI KUMAR

“Imagine an Indian city with street corners full of women: chatting, laughing, breast-feeding, exchanging corporate notes or planning protest meetings. Imagine footpaths spilling over with old and young women watching the world go by as they sip tea, discuss love, cricket and the latest blockbuster.” In the book, Why Loiter?, Shilpa Phadke, Sameera Khan, and Shilpa Ranade remind us that this imagined city is far remote to the known Indian reality. Most public spaces in India are traditionally occupied by men. Be it public streets, railway stations, markets, shops, or long queues, women are often either absent or in the minority. Why is this so? One part of the reason is the traditional gender roles which require women to engage in household work. The other part has to do with concerns of safety or simply the impression that so-called public spaces are unwelcome to women. The Shakti scheme launched by the Congress government in Karnataka seeks to change this.

Under this scheme, where women can travel for free on State buses, the aim is to make transport more accessible and safer for women. Removing even small cost barriers can have a big impact. This is especially the case for women who do not earn and who are financially dependent on their spouses for transport costs. But it is also beneficial to working women. It makes working outside the home more attractive. They save on the commute, making it more viable for women to seek out work. In this way the policy helps challenge gender stereotypes that women belong to the household.

There are also benefits to all women regardless of whether they use buses or not. Public spaces often become more women-friendly if more women are using it. The Shakti scheme brings women into public life and makes public space ‘less male’. There are many steps needed to shape cities along the vision Phadke, Khan, and Ranade outline. The Shakti scheme is one such step. As its name suggests, it empowers women to claim and reclaim public spaces. We have seen daily wage labourers, sanitation workers and house maids availing the scheme, in turn demonstrating how a well-thought-out policy can be truly empowering for womenfolk. Like several welfare schemes for women, this policy too has feminist politics to it.

Similar schemes in other States have proved to be successful. In 2019, the Government of Delhi

initiated a policy of enabling free travel for women passengers in government buses. In 2021, the Governments of Punjab and Tamil Nadu introduced a similar policy. The initial response from Karnataka indicates that it is working. In the initial three days, around 98,58,518 women availed the scheme.

Despite the popularity with women and its principled rationale, critics frequently raise two objections. The first is rooted on the ground that the policy is a ‘freebie’ or government handout which is not even targeted towards those who need it. The second objection is that the policy is discriminatory. However, neither stands up to scrutiny.

The labelling of the policy as a ‘freebie’ mischaracterises the measure and overlooks the socio-political framework where it operates. First, there are several State-funded goods that are free of cost. Public schools educate children free of cost. Public hospitals treat patients free of cost. Public parks are free of cost. Most of the roads which private vehicles drive on are free of cost. Of course, none of these things is literally for free. They are paid out of taxpayer money. But if taxpayers are paying for schools, hospitals, parks, and roads, then why not pay for bus travel as well? Why should a free use of a bus be a “freebie” but the free use of a road not? It turns out that there is no good answer.

The reason why governments pay for schools, hospitals or the like is that taxpayer funding achieves better and fairer outcomes than private payment. The Shakti scheme aims for a fairer outcome of more gender equal public spaces. Only free bus travel achieves this outcome.

If this is the key objective of the scheme, then it is irrelevant that the scheme also includes women who can afford travel. The benefit does not lie alone in the direct effect, but in what economists would call “positive externalities”.

Other critics have focused on the idea that it is discriminatory to have tickets for men and not for women. Article 15 of the Constitution prohibits discrimination on specified grounds, including sex. It is true that prices are set at different rates for men than for women. However, not every case of differential treatment is wrongful discrimination. We often treat men and women differently. Special scholarships exist for female students to encourage and support women who seek out education. There are women-specific employment and livelihood programmes initiated by the State. There are already seats reserved for women in various means of public transport.

The reason behind these measures is that, very often, we need to confront the realities of a deeply patriarchal society. The Shakti scheme is a direct response to this. It challenges the maleness of public spaces. The framers of India’s Constitution were aware of these necessities. This is why they included Article 15(3) which allows the state to make special provisions for women and children. The overarching nature of ‘special provision’ allows the state to include measures that range from free bus travel to reservation for women in employment, education or politics. The Shakti scheme squarely falls within this category. Legal challenges to similar schemes in other regions such as Delhi have failed due to the same reason. As the Supreme Court held in the case of P.B Vijayakumar: “The insertion of clause (3) of Article 15 in relation to women is a recognition of the fact that for centuries, women of this country have been socially and economically handicapped. As a result, they are unable to participate in the socio-economic activities of the nation on a footing of equality.”

None of this is to say that free bus rides for women are enough. Concerns about sexual harassment, women-friendly infrastructure, and the like remain. But the scheme is a step in the right direction in guaranteeing equal citizenship of women. Hopefully, one day, the scheme will no longer be necessary because women, just like men, can loiter in the street and equally share our public spaces.

Thulasi K. Raj is a lawyer at the Supreme Court of India. Bastian Steuwer is an Assistant Professor of Political Science, Ashoka University

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Karnataka / Karnataka Assembly Elections 2023 / Indian National Congress / politics / welfare / social issue / public transport / Delhi / Tamil Nadu / Punjab

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Source : www.thehindu.com Date : 2023-08-03

MIZORAM CM'S STAKE IN MANIPUR CONFLICT

Relevant for: Indian Polity | Topic: State Legislatures - structure, functioning, conduct of business, powers & privileges and issues arising out of these

August 03, 2023 12:59 am | Updated 01:03 am IST

Mizoram Chief Minister Zoramthanga and members civil society organisations take part in a demonstration in Aizawl on July 25, 2023 to express solidarity with the Zo people in ethnic strife-torn Manipur. | Photo Credit: PTI

The ruling Mizo National Front (MNF) suffered a setback in central Mizoram in April. The extremist outfit-turned-political party, which won 26 of the 40 Assembly seats in 2018, lost all 11 seats in the Lunglei Municipal Council to the Zoram People's Movement (ZPM).

The ZPM had given the MNF a scare in 2021 by penetrating areas in Chief Minister Zoramthanga's Assembly seat – Aizawl East-1 – although it bagged six of the 19 Aizawl Municipal Corporation seats. Mr. Zoramthanga, a former extremist hardened by guerilla warfare, is also the president of the MNF.

The Lunglei loss, eight months ahead of the Assembly polls later this year, was an indication for the MNF and Mr. Zoramthanga, battling a fiscal crisis and charges of nepotism, that the 2023 polls may not be a cakewalk.

And then, Manipur happened.

Also read | Manipur Chief Minister asks Mizoram counterpart to protect Meiteis

Ethnic affiliation is said to have made Mr. Zoramthanga vocal about the Kuki-Meitei ethnic conflict in Manipur that killed some 150 people and displaced about 60,000 since May 3. A drive against drugs and a 'tribal solidarity march' to protest a move for granting Schedule Tribe status to the majority Meiteis were said to be among the triggers.

Mr. Zoramthanga is a Mizo, the dominant community of Mizoram ethnically related to the Kukis and Zomis of Manipur, the Chins of Myanmar, and the Kuki-Chins of Bangladesh. They belong to the greater Zo community, sharing the same ancestry, culture, and tradition and speak almost the same language.

People aware of such ethnic bonding among indigenous communities in the northeast were not surprised when Mizoram protested the violence in Manipur, particularly after a video showing two Kuki women paraded naked in the Meitei-dominated Imphal Valley and allegedly raped went viral in July, two months after it took place on May 4.

Mr. Zoramthanga took the lead in expressing the Mizo angst against the alleged ethnic cleansing of the Kuki-Zo people in Manipur and supporting the demand for a separate administration for them. He tweeted: “...There is bloodshed all over. With no iota of doubt, those victims are my kin, my own blood. Should we quieten the situation by just being silent?”

There was another reason: more than 12,500 displaced Kukis from Manipur had taken shelter in Mizoram, adding to some 40,000 others who fled the conflicts in Myanmar and Bangladesh.

But the strongest of his critics acknowledged that Mr. Zoramthanga stole a march over his rivals in capitalising on Manipur’s misery, reportedly keeping the Assembly elections in mind. He won many hearts by walking along with protestors on the streets of Aizawl. It inevitably drew comparisons with the response of other parties to the Manipur issue. While the once-formidable Congress has been facing a leadership issue in Mizoram, ZPM chief Lalduhoma, a former IPS offer, is believed to have lost the Manipur plot.

Mr. Zoramthanga did not just grab the opportunity that Manipur presented him. Holding his Manipur counterpart N. Biren Singh responsible for the ethnic violence, he expressed solidarity with the Kukis of Manipur, thereby – as his critics say – increasing the chances of the MNF to retain power in Mizoram.

Mr. Singh asked Mr. Zoramthanga not to “interfere” in Manipur, expressing his disappointment at his Mizoram counterpart’s participation in a rally where abusive slogans were shouted against him. “A CM should not interfere in other States’ affairs. I cannot meddle in something happening in Assam or Mizoram without the chief ministers’ consent,” Mr. Singh said.

Meitei organisations in Manipur have been burning Mr. Zoramthanga’s effigies, advising him to focus on his own State. They reminded him of the “atrocities” the Mizos inflict on minority tribes such as the Chakma and the Bru, many of whom fled to Tripura following ethnic violence in 1997. They also pointed out how Mizoram reduced the quota for Chakma students in higher technical courses from 4% to 1%.

Many in Mizoram believe Mr. Zoramthanga’s concern for the Kuki-Zomi people in Manipur could force the Manipur government to work toward peace. They also feel the “interference” in the affairs of another State could help the MNF ward off challenges in the 2023 Assembly polls.

rahul.karmakar@thehindu.co.in

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Source : www.thehindu.com Date : 2023-08-07

IN TELANGANA, FEW FUNDS, BUT MANY PROMISES

Relevant for: Indian Polity | Topic: State Legislatures - structure, functioning, conduct of business, powers & privileges and issues arising out of these

August 07, 2023 12:46 am | Updated 12:46 am IST

Telangana Chief Minister K. Chandrasekhar Rao speaks in the State Assembly in Hyderabad on August 6, 2023. Photo: Twitter/@BRSparty via PTI

The Bharat Rashtra Samithi-led Telangana government's struggle to mobilise funds to effectively implement its flagship schemes is proving to be worrying for it, with the State set for elections in less than six months.

The government made a budgetary provision of 17,700 crore for Dalit Bandhu, where the government provides a one-time capital assistance of 10 lakh each to Dalit families to aid their entrepreneurial aspirations. Under Rythu Bandhu, another flagship scheme, the government provides 5,000 per acre per farmer each season for the purchase of inputs and other investments. The government allocated more than 15,000 crore for Rythu Bandhu in the Budget for this fiscal.

It began crediting these amounts to farmers' accounts after the commencement of the kharif season. Farmers who own land up to five acres received the funds. But the process has slowed down due to financial constraints.

The government had made a budgetary provision of 38,627 crore for salaries/wages, 13,024 crore for pensions, and 12,958 crore for subsidies (primarily the provision of free electricity all day to the farm sector). The debt servicing component was pegged at 22,407 crore. Of this, the State government incurred 5,247 crore at the end of the first quarter, according to the provisional figures submitted to the Comptroller and Auditor General of India.

Even as the Finance Department is struggling to find funds to meet the government's commitments, Chief Minister K. Chandrasekhar Rao recently announced the launch of yet another scheme, Gruha Lakshmi, which is aimed at providing 3 lakh each to poor families who own land, for construction of houses. This involves an outgo of 7,350 crore — 3,900 crore for beneficiaries in urban areas and 3,450 crore for beneficiaries in rural areas.

The government's unease in raising resources stems from the fact that the revenue receipts of the first quarter did not meet expectations. The State's total revenue receipts at the end of the April-June quarter were 35,024.72 crore. This includes borrowings, and other liabilities in the form of capital receipts of 15,876.5 crore. The revenue receipts at the end of the first quarter were about 16.1% of the 2.16 lakh crore projected in the Budget estimates for the current fiscal.

Also,the Union Finance Ministry has imposed restrictions on the State's market borrowings citing "over borrowings" during the previous fiscals. The Finance Ministry said that the borrowing limit of Telangana for 2023-24 would be 57,813.99 crore, as per the recommendations of the Fifteenth Finance Commission and as per the annual borrowing ceiling for the financial year. "However, as the State government had over-borrowed in the preceding financial years, the gross borrowing ceiling of the State for 2023-24 has been fixed at 42,225.17 crore after adjusting over-borrowing of 15,588.82 crore of previous years," said a spokesman of the Finance Ministry.

Of the borrowing ceiling, the State Government had opted for negotiated loans of 1,500 crore and borrowings from public account to the tune of 4,107.82 crore. This left it with the option of raising 36,617.35 crore from the open market. This is over 1,500 crore less than the 38,234 crore proposed to be mobilised through borrowings and other liabilities in the current year's budget.

Even as the State government accused the Centre of stifling the States by imposing restrictions on their borrowing limits, Union Finance Minister Nirmala Sitharaman was categorical that the Centre was discharging its constitutional responsibility of supervising borrowings and said that the limits were equally applicable to all the States.

In her reply to a query in the Lok Sabha, Ms. Sitharaman said that Telangana's outstanding liabilities increased from 1.9 lakh crore in FY2019 to 3.66 lakh crore in the Budget estimates of the current fiscal. Telangana was next only to Rajasthan in year-wise increase in outstanding liabilities in percentage terms during the last five years.

There are more welfare schemes likely to be announced in Telangana over the next few months. The government would do well in making sure that its finances are in place before announcing them. It can ill-afford to make promises that will put it in a bind for years to come.

Telangana / election / budgets and budgeting / welfare / government / agriculture / electricity production and distribution / accountancy, auditing / public housing / finance (general) / loans / government debt

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Source : www.thehindu.com Date : 2023-08-07

SENSE OF PROPORTION: THE HINDU EDITORIAL ON THE RAHUL GANDHI CASE

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

August 07, 2023 12:20 am | Updated 12:20 am IST

In staying the conviction of Congress leader Rahul Gandhi in a case in which he was found guilty of defaming all those who have 'Modi' as their surname, the Supreme Court of India has restored his membership of the Lok Sabha as well as a much-needed sense of proportion in public affairs. The Bench, headed by Justice B.R. Gavai, has noted the absence of a substantive reason for the trial court awarding Mr. Gandhi a two-year prison term, the maximum sentence for criminal defamation, for his remark "Why do all these thieves have the Modi surname?" made during the 2019 general election campaign. It also noted that had the sentence been even a day shorter, he would not have been disqualified from the Lok Sabha. The Court has obviously seen that the quantum of sentence was the same as the prison term that is required to get someone disqualified as a legislator, as well as from contesting elections for six years after completing the term. The Bench has also noted that the only reason given by the trial court in favour of the maximum sentence was that Mr. Gandhi had also been admonished by the Supreme Court in contempt proceedings in 2019, and subtly questioned its relevance by remarking that had the court admonition come prior to his speech, he would have been more careful.

A regrettable feature of the judiciary these days is that one has to go all the way to the Supreme Court for justice. In the case of Mr. Gandhi, a dodgy defamation case in Surat resulted in his being found guilty of defaming an amorphous collective of people with a particular surname and sentenced to a two-year prison term. The Lok Sabha Secretariat promptly notified his disqualification the very next day after his conviction. Even if there was an arguable case for the remarks amounting to defamation, the imposition of the maximum permissible sentence was quite perverse. It was unfortunate that both a district court in Surat and the Gujarat High Court declined to stay his conviction, an intervention that could have restored his membership, with grandiose comments to the effect that the offence was grave, that it was marked by "moral turpitude" and that he did not deserve the benefit of stay of conviction because the object of the law was to keep offenders out of public office to maintain purity in politics. The Lok Sabha Secretariat should show the same promptitude in restoring his membership and enable him to participate in parliamentary debates, especially the upcoming one on a no-confidence motion moved by the Opposition. The cause of ensuring purity in politics is certainly not served by keeping out elected representatives from Parliament on the basis of a case that rests on flimsy grounds. Indeed, such a process of disqualification actually subverts democracy.

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Rahul Gandhi / judiciary (system of justice) / parliament / Lok Sabha / Gujarat / Surat / prison / General Elections 2019 / laws / democracy / politics (general)

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Source : www.thehindu.com Date : 2023-08-12

IN ‘DEMOLITION RAJ’, THE HIGH COURTS AS BEACONS

Relevant for: Indian Polity | Topic: Executive: Structure, Organization & Functioning ; Ministries and Departments of the Government

August 12, 2023 12:16 am | Updated 09:04 am IST

‘It is time the High Courts stepped up to perform the stellar role given to them by Article 226 of the Constitution, a power greater than the corresponding power the Supreme Court has’ | Photo Credit: Getty Images/iStockphoto

In the districts of Gurugram and Nuh in Haryana, there have been clashes between Hindu and Muslim communities. People have been killed and public property damaged. Tensions are running high. A good administration would have moved in to restore law and order, maintain peace, arrest the culpable, and commence the legal process of charge and prosecution. It would have also housed people left on the streets due to property damage.

Also read |Did you issue notice before demolitions, Punjab and Haryana HC asks Haryana

However, in today’s India, good administrations are not the norm. Following the example of its peers in Uttar Pradesh, the Haryana government has taken to demolishing the houses of persons it suspects to have been involved in the violence. Overnight and without notice.

And although there has been loss of both Hindu and Muslim lives, it is only the houses of the Muslim community that are targeted. Selectively and exclusively. More people are left on the streets. And the rule of law is also demolished, most notably Article 14 enshrining the equality of law and equal protection of law. That has given way to political expediency and capital, the electoral advantages of teaching a lesson to the minorities, to the rising crescendo of hate-politics, all with an eye on the next general election.

In all this, where do the courts sit, the guardians of the Constitution and protectors of the rights flowing therefrom? When the bulldozers in Uttar Pradesh were rampaging, the Supreme Court of India was moved. Its response was tepid, hearing the government say that these were illegal constructions and the law was taking its course. And it stopped with making a general observation that all procedures should be followed. But what was expected were hard questions: Why are you targeting one community? Why is it only these houses when there are thousands of illegal constructions? Why the quick speed demolition? What happened to notice and inquiry? And hard action has to follow when hard questions are not answered satisfactorily. Rebuild houses. Pay interim compensation to those affected. Take action against the official demolishers. If that had been done in the first instance by the Court, other State governments

would be wary. Precedents are not just for the law reports, but guides for future actions.

Unfortunately, we are at a stage where the Supreme Court seems to be giving in a little more than it should. Look at the repeated extensions to the Director of the Enforcement Directorate in blatant disregard of several Supreme Court orders. But still the Court does not draw a line.

It is a simple fact of constitutional realpolitik — if you do not draw the Lakshman Rekha and if you do not punish every transgression, that line will resemble the one on the kabbadi field where there will be forays with impunity. Look at the enormous delays in hearing cases relating to the dilution of Article 370 and conversion of Jammu and Kashmir into Union Territories, electoral bonds, demonetisation, immunity of legislators under Article 194, validity of the Assam Accords and amendments to the Citizenship Act to the extent that we now have a doctrine of adjudication by fait accompli — the illegality complained of has been in force for such a long time that it cannot be remedied, and must therefore be accepted.

And we have several instances of fine lawyers being nominated for High Court judgeships by the collegium — Somasekhar Sundaresan, Saurabh Kirpal, R. John Sathyan, and one of the country's finest judges, S. Muralidhar as Chief Justice of the Madras High Court. But the government sits on the files and the Court does not display the rod.

Which is why every assertion of what a court should do is a welcome one; and very welcome when it comes from a High Court. In the Haryana demolitions, it is the Bench of Justices G.S. Sandhawalia and Harpreet Kaur Jeevan who have asked the most pointed question: Is this ethnic cleansing? Asking the question is as powerful as dealing with the answer — that a court in India should have to voice the question is a damning indictment of the powers that be. The court went further and put an immediate stop to the demolitions. It also recorded the State Home Minister's justification of the demolitions and immediately reminded him of Lord Acton's immortal classic — "power tends to corrupt. And absolute power corrupts absolutely". And this was done suo motu, on the court's own motion. Bravo, my Lords, we are grateful. Every candle lights up the darkness, and this is no small beacon.

But commentators and public opinion makers have asked two other uncomfortable questions. Could not the Supreme Court have taken suo motu action? Why is it that no one approached the Supreme Court?

As the Bob Dylan song goes,'The answer, my friend, is blowin' in the wind'.

When in times of trouble, I recollect what Justice Vivian Bose had said. One has to read his judgment in State of West Bengal vs Anwar Ali Sarkar, a case that concerned an act of the West Bengal government which allowed the State to establish special courts for the trial of certain offenders without any reasonable basis for differentiating such offenders from others.

And, 'When the froth and the foam of discussion is cleared away and learned dialectics placed on one side, we reach at last the human element which to my mind is the most important of all. We find men accused of heinous crimes called upon to answer for their lives and liberties. We find them picked out from their fellows … they are deprived of substantial and valuable privileges of defence which others, similarly charged, are able to claim… The question with which I charge myself is, can fair-minded, reasonable, unbiased and resolute men, who are not swayed by emotion or prejudice, regard this with equanimity and call it reasonable, just and fair, regard it as that equal treatment and protection in the defence of liberties which is expected of a sovereign democratic republic in the conditions which obtain in India today? I have but one answer to that. On that short and simple ground I would decide this case and hold the Act bad' (deletions mine).

We have had many disappointments with our recent esteemed senior judges, and a former Chief Justice of India has raised eyebrows sharply with his newly found doubts about the basic structure after his nomination to the Rajya Sabha. It is time we recalled the greats of our jurisprudence, kept them in mind and lived by the truths they told. And it is time the High Courts stepped up to perform the stellar role given to them by Article 226 of the Constitution, a power greater than the corresponding power the Supreme Court has. They performed spectacularly during the dark Emergency, but they, and us, were let down even more spectacularly by the Supreme Court. For rising to the task again, the judges of the High Court of Punjab and Haryana have shown the path.

Sriram Panchu is Senior Advocate, Madras High Court

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Source : www.thehindu.com Date : 2023-08-14

A SCIENTIFIC SURVEY AT GYANVAPI, ITS LIMITS

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

August 14, 2023 12:42 am | Updated 01:07 am IST

Members of the Archaeological Survey of India's team at the Gyanvapi mosque complex in Varanasi on August 8, 2023. | Photo Credit: PTI

On August 4, the Supreme Court of India directed the Archaeological Survey of India (ASI) to conduct a detailed non-invasive survey of the Gyanvapi mosque in Varanasi, Uttar Pradesh to determine if the mosque was built atop a temple. As the matter has significant political implications, it is important to understand the working principles of the scientific methods used in such surveys, their abilities, and their limitations.

Archaeology has, due to the ever-increasing social and legal complexities that it found itself confronting, embraced modern scientific methods, including from physics, molecular biology, geology, and anthropology. Archaeological investigations are normally performed in open spaces, along with excavation, where scientists have the option to use both ground and airborne systems to identify and test targets.

In the present case, since the investigation is being undertaken inside a built structure, and no excavation is permitted, experts — geophysicists in particular — must depend on non-invasive methods of earth-scanning.

Editorial | Incremental injustice: On the Gyanvapi mosque survey

The methods routinely used in archaeological prospecting are adapted from those applied in geophysical mapping. They may be active or passive. Active methods inject energy into the ground and measure the response of the buried target at the surface. They include seismic and electromagnetic techniques. Passive methods, such as magnetometry and gravity surveying, simply measure existing physical properties.

In both cases, the methods provide an estimate of the ground's material properties, such as density, electrical resistance, and wave velocity. They are then interpreted in terms of the possible nature and geometry of the target. In the case of Gyanvapi, the scientists could be looking for the distinct physical properties of subsurface material constituting the structure.

Many earth materials could have the same physical property and generate the same response on the surface, leading to ambiguity in interpretation. In response, geophysicists use multiple methods and different physical properties of the earth's materials to arrive at a reasonable

characterisation of the target. It is expected of those involved in the survey to have considered this.

Media reports have suggested that the ASI will use ground-penetrating radar (GPR) to produce a 3-D model of buried archaeological features. GPR operates by introducing a short radar impulse from a surface antenna and recording both the time and magnitude of return signals reflected by the property contrasts in the subsoil. Significant improvements in instrumentation have allowed large amounts of digital data to be collected along closely spaced parallel paths for detailed analysis and imaging.

Because the radar beam spreads out in a cone from the transmitter — similar to a smoke ring — the buried object will reflect part of the beam before the antenna passes directly over it. In such a situation, a part of the signal may bear little relation to the physical dimensions of the subsurface target and create false images.

An important aspect of the geophysical survey is to infer physical parameters from the complex and voluminous data acquired. This requires a good understanding of physical processes and powerful data analyses and modelling programs to generate reliable 3D images.

Since the archaeological object under investigation is made of heterogeneous materials with complex geometry, this object is simplified in the form of a representative model with well-defined and finite parameters.

In general, the laws of physics provide the means to compute some data given a computational model. Only in the ideal case does an exact theory exist that prescribes how the data should be transformed in order to reproduce the model. In most cases, including the survey being conducted by ASI, the mathematical framework assumes that infinite and noise-free data will be available.

However, as the data will always be limited and have measurement errors, it may not be possible to estimate, in a unique and stable manner, the spatial distribution of physical property in the subsurface. As a result, supplementary information needs to be incorporated. This has the potential to produce meaningless results. This is well-recorded in the geophysical literature and graduate–level textbooks. Even data from sophisticated lunar penetrating radar systems analysed by different authors and published in different journals, have reported contradictory interpretations.

Despite its inability to reconstruct the images of targets in the best possible manner, geophysical tools have a high success rate in resource exploration. But in the case of a failure or partial success during the exploration of natural resources, the loss is merely financial. On the other hand, a ‘temple versus mosque’ problem is another matter entirely, involving emotional and sentimental issues and with long-term societal and political implications.

In such cases, nothing should be left to chance. GPR or any other geophysical method has limited abilities, and its findings must be interpreted within these contours. During data analysis, interpreting, and decision-making, experts as well as the people need to bear this in mind.

Shyam S. Rai is a former Professor and Chair in the Department of Earth and Climate Science, Indian Institute of Science Education and Research, Pune, where he continues to serve as an emeritus professor

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Source : www.thehindu.com Date : 2023-08-14

REBOOTING THE CODES: THE HINDU EDITORIAL ON THE IPC, CRPC AND EVIDENCE ACT

Relevant for: Indian Polity | Topic: Indian Constitution - Historical underpinnings & Evolution

August 14, 2023 12:20 am | Updated 12:20 am IST

Few would disagree that laws require an overhaul from time to time so that they could be abreast of developments in technology and changes in society. However, it does not mean that whole new Codes be introduced and given abstruse names, when, in substance, the old laws are essentially retained. The first criticism about the Bharatiya Nyaya Sanhita (BNS, to replace the Indian Penal Code), the Bharatiya Nagarik Suraksha Sanhita (BNSS, to replace the Code of Criminal Procedure) and the Bharatiya Sakshya Bill (to replace the Indian Evidence Act) is that it is unnecessary to refer to them wholly in their Hindi names. Every law in India has an official translation in the respective official language of every State; so the need for the IPC, CrPC and Evidence Act to be referred to in their Hindi names alone is questionable. The criminal procedure law was re-enacted in 1973, and it is known as the CrPC, 1973, as distinct from its 1898 version. The objective to have Hindi names is apparently an attempt to symbolise the de-anglicisation of criminal law. However, a preliminary scroll through the new laws indicates that much of the original language is retained. It raises a doubt whether the changes are far too few to warrant their being enacted afresh, as deletions and amendments may have achieved the same purpose. It is some consolation that the ‘Sanhitas’ are to be scrutinised by a Parliamentary Standing Committee, as the consultation process appears inadequate.

In substance, the deletion of ‘sedition’ is welcome, and its apparent equivalent, the new Section 150, does not use overbroad terms such as promoting ‘disaffection’ against the government or bringing it into ‘hatred or contempt’. It criminalises promoting secessionism, separatism and armed rebellion, but it also targets ‘subversive activities’ and ‘endangering the sovereignty, unity and integrity of India’ — terms that should not be allowed to be misused. Another potentially misusable provision is in the new Section 195 (equivalent to Section 153B IPC): it penalises making or publishing “false or misleading information jeopardising the sovereignty, unity and integrity or security of India”. While ‘mob lynching’ and ‘organised crime’ are new sections, a significant omission is ‘hate speech’ even though defining it and punishing it have been under discussion for some years. The procedure code enables conduct of trial of proclaimed offenders in absentia. Making videography of seizures mandatory is welcome. So too the provision for deemed sanction if authorities fail to grant it within 120 days. However, the remand provisions seem to permit police custody beyond the current 15-day limit, attracting some criticism. The new laws need critical scrutiny, but not new names.

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laws / parliament

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Source : www.thehindu.com Date : 2023-08-14

GLARING OMISSION: THE HINDU EDITORIAL ON THE IMPORT OF EXECUTIVE MAJORITY IN ECI SELECTION PROCESS

Relevant for: Indian Polity | Topic: Elections, Election Commission and the Electoral Reforms in India Incl. Political Parties

August 14, 2023 12:10 am | Updated 12:19 am IST

The Union government's proposal to have a three-member selection panel with a majority for the executive for the appointment of members of the Election Commission may not subserve the objective of protecting the poll watchdog's independence. A Bill introduced in the Rajya Sabha says the committee will consist of the Prime Minister, the Leader of the Opposition and a Union Cabinet Minister. This runs counter to a recent judgment of a Constitution Bench that envisaged an independent selection committee that included the Chief Justice of India. The judgment was also in line with the recommendations of the Dinesh Goswami Committee in 1990 and the Justice Tarkunde Committee in 1975. It is true that the Court said that its order would hold good only until Parliament made a law as envisaged in the Constitution. However, for the government to retain an executive majority in the selection process amounts to disregarding the spirit of the Court's recommendations. An argument could be made that the CJI's presence in the process could provide pre-emptive legitimacy to appointments and affect judicial scrutiny of errors or infirmity in the selections. Yet, when weighed against the fact that the ECI is a constitutional body that not only conducts elections but also renders a quasi-judicial role, the need for a selection process that embodies insulation from executive preponderance makes sense.

A non-partisan and independent ECI is a sine qua non for the robustness of electoral democracy. The Election Commission of India has played a seminal role in the periodic conduct of elections, which have only seen greater participation from the electorate because of the largely free, fair and convenient nature of the process. Yet, there are misgivings. In the run-up to the 2019 general election, for example, the announcement of elections was delayed for a month between February and March, allowing the government to inaugurate many projects. The Model Code of Conduct was unevenly implemented, with the ruling party receiving favourable treatment by the ECI, leading to dissent by one of the commissioners. The independent V-Dem Institute in Sweden, which compares democracies worldwide, has downgraded India to an "electoral autocracy", citing the loss in autonomy of the ECI. With the next Lok Sabha election just months away, it should have been incumbent on the government to stay true to the Constitution Bench's judgment and retain its recommendations in the Bill. It is for the Opposition now to ensure that the Bill is discussed and modified.

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Source : www.thehindu.com Date : 2023-08-15

A BRIEF HISTORY OF INDIA’S PRESENT

Relevant for: Indian Polity | Topic: Issues and Challenges Pertaining to the Federal Structure, Dispute Redressal Mechanisms, and the Centre-State Relations

August 15, 2023 12:16 am | Updated 12:16 am IST

‘Although the ordinary Indian is putting up a brave fight to douse these fires of hate, it seems akin to throwing a bucket of water at a wildfire’ | Photo Credit: Getty Images

Punjab, Uttar Pradesh, Delhi, and Bengal (1947). Calcutta (1964). Ahmedabad (1969). Bhiwandi (1970). Delhi (1976). Assam (1983). Delhi and Bhiwandi (1984). Meerut (1987). Bhagalpur (1989). Somnath–Ayodhya–Bombay (1990-1993). Gujarat (2002). Muzaffarnagar (2013). Delhi (2020). Manipur and Gurugram (2023). Here is a cursory list of the big ticket #riots, the ones that get column space on the front page of newspapers; the ones that make the 9 p.m. headlines night after night, even if the victims are not always remembered.

Section 144 of the Indian Penal Code dutifully imposes a curfew; Sections 153A and 295A are used to arrest those who hurt religious sentiments, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is to punish those who commit crimes against castes. The Model Code of Conduct is supposed to penalise those who violate a “model code of conduct” during election time. All laws (journalists, historians and political scientists have documented in painstaking detail) have been deployed selectively, politically. The suspension of the Internet is a new device, used with equal facility to curb the spread of information and misinformation (and cheating during examinations).

Old colonial laws, new independent-India-laws, newly renamed, wannabe laws. Seventy-five years of artfully maintaining “law and order”, rinsing, repeating, and normalising an increasingly Hindu majoritarian status quo.

Every student of the Partition violence of 1947 has come across news reports of a physically brave Jawaharlal Nehru stepping into a mob of rioters and rescuing Muslims from being beaten to death. In 2023, we wait, count the days, weeks, months it takes for the Prime Minister to break his silence and tweet a message of condemnation over a death caused by Hindu vigilantes, or expend three minutes of time in Parliament to refer to the state of collapse in Manipur. Seventy-five years of riots have reduced our expectations so spectacularly, even of our political leadership. How did we come to such a pass? Perhaps we should reckon with a founding act of violence, and its long shadow over our polity.

Nathuram Godse was a journalist, an editor of newspapers, and a co-founder of rifle clubs across the Bombay Presidency during the Second World War.

He was a devotee of V.D. Savarkar, the long-time leader of the Hindu Mahasabha, and fully internalised his slogan to “Militarise Hinduism and Hinduise the Military”. Godse’s newspapers, Agrani, and later Hindu Rashtra, had to deposit security for hate-filled writings that were deemed to breach public security in 1947. Godse killed Gandhi because he held him responsible for Partition; he wanted to create a purely Hindu Rashtra and opposed the return of Muslims to civil-war-torn-Delhi.

Godse used his defence during the Gandhi murder trial as an opportunity to narrate his version of the recent past. He spoke so persuasively that High Court judge G.D. Khosla recorded in his memoirs that had he faced a jury trial, Godse would have earned a verdict of not guilty. Godse was photogenic and articulate; in today’s India, he would have worked as a journalist on television, narrating his version of events on prime time, and possibly raking in high ratings.

Godse’s demand for a nation where Muslims should be rendered invisible, or forced to leave India, appears to be coming true. At least the first half of Savarkar’s popular slogan — “militarise Hinduism” — has been on display in recent marches and rallies of the Bajrang Dal and allied organisations across north India.

What will the historian of the future, if we can conceive of a future for our planet, write in a history of this time 200 years from now? First, they will not be able to read parliamentary debates. Instead, they will confront endless “interruptions” and “comments expunged” from the record. Less than one handful of Members of Parliament from regional parties such as the Dravida Munnetra Kazhagam and the Trinamool Congress have been able to and permitted to speak and finish their speeches in the last decade.

Second, our historian of the future will despair at tracing the outlines of an argument as key interlocutors shift political allegiances for immediate political gains. Who said what in 2013 will hardly matter if the ground shifts so dramatically two years later. What context and set of ideological principles will explain the 180-degree about-turn of a political opponent-turned ally in record time?

Third, if equipped with an archaeologist’s tools, our historian will wonder why our monuments were all suddenly being dug up... but only up to a certain stratum. Why were they not dug up to reveal an older history, a possibly Buddhist era?

Fourth, our historian will ask if we have been too slow to name this age of extreme hate, to recognise the significance of ideology in reshaping India into a Hindu Rashtra. With leaders gaining notoriety for inventing catchy hate slogans and fuelling violence and being rewarded with political office, with what credibility can political leaders request the public to pay regard to norms of civility and propriety? Hate is the new normal, the speech that is politically correct, the speech that is politically rewarded.

While we do not have an elaborate description of the Hindu Rashtra of Godse’s desire, it is now possible to outline what such a state might look like and feel like for its citizens. A Hindu Rashtra will be a state that imposes a particular set of upper-caste Hindu norms on the entire country in the name of uniformity and homogeneity: where Muslims are afraid to “look Muslim” in public places such as trains, and in protected spaces such as schools and colleges; where Muslim homes are raided for “forensic” analysis of their refrigerator; where Muslims are prohibited from renting or buying in gated communities and neighbourhoods that are “vegetarian-only”; where Hindu festivals are celebrated in some parts of India with anti-Muslim hate speech blaring out of loudspeakers in the guise of rap music; where all Hindus are expected to provide donations for a temple regardless of their particular religious sympathies; where bulldozers target and destroy Muslim homes; where Muslim trades and businesses are boycotted (this tactic is listed in

Godse's articles); where the token (assimilable) Muslim film star is feted at the same time that a Muslim cricketer abused when a match is lost and a Muslim comedian imprisoned for a joke he did not crack; where textbooks are "rationalised" to brainwash a new generation of students into believing in authoritarian leaders and a simplistic past; where the voice of justice is soft, routinely late, and ignored by the political class.

And where upper caste Hindu norms of women's subservience and seclusion are imposed on and imbibed by half a billion women, quietly. Where the plummeting rate of women in the workforce, despite increasing educational qualifications and declining fertility, leaves India in the bottom five nations of the world along with Iraq, Pakistan, Syria, and Yemen, according to the 2020 World Economic Forum Report on gender gaps in economic participation. This increasing gender gap, unique for a middle-income country, has been analysed by generations of economists including, most recently, Shrayana Bhattacharya.

A Hindu Rashtra will be a state whose fires will consume us all — Muslim, Christian, Sikh, Dalit, Buddhist, and those not deemed sufficiently Hindu. And although the ordinary Indian is putting up a brave fight to douse these fires of hate, it seems akin to throwing a bucket of water at a wildfire. We, the people of India, will have to choose between Godse's Hindu Rashtra, and the idea of India in the Constitution.

Neeti Nair is the author of 'Hurt Sentiments: Secularism and Belonging in South Asia', 2023 and 'Changing Homelands: Hindu Politics and the Partition of India', 2011. She is Professor of History at the University of Virginia, U.S., and Global Fellow at the Woodrow Wilson International Center for Scholars

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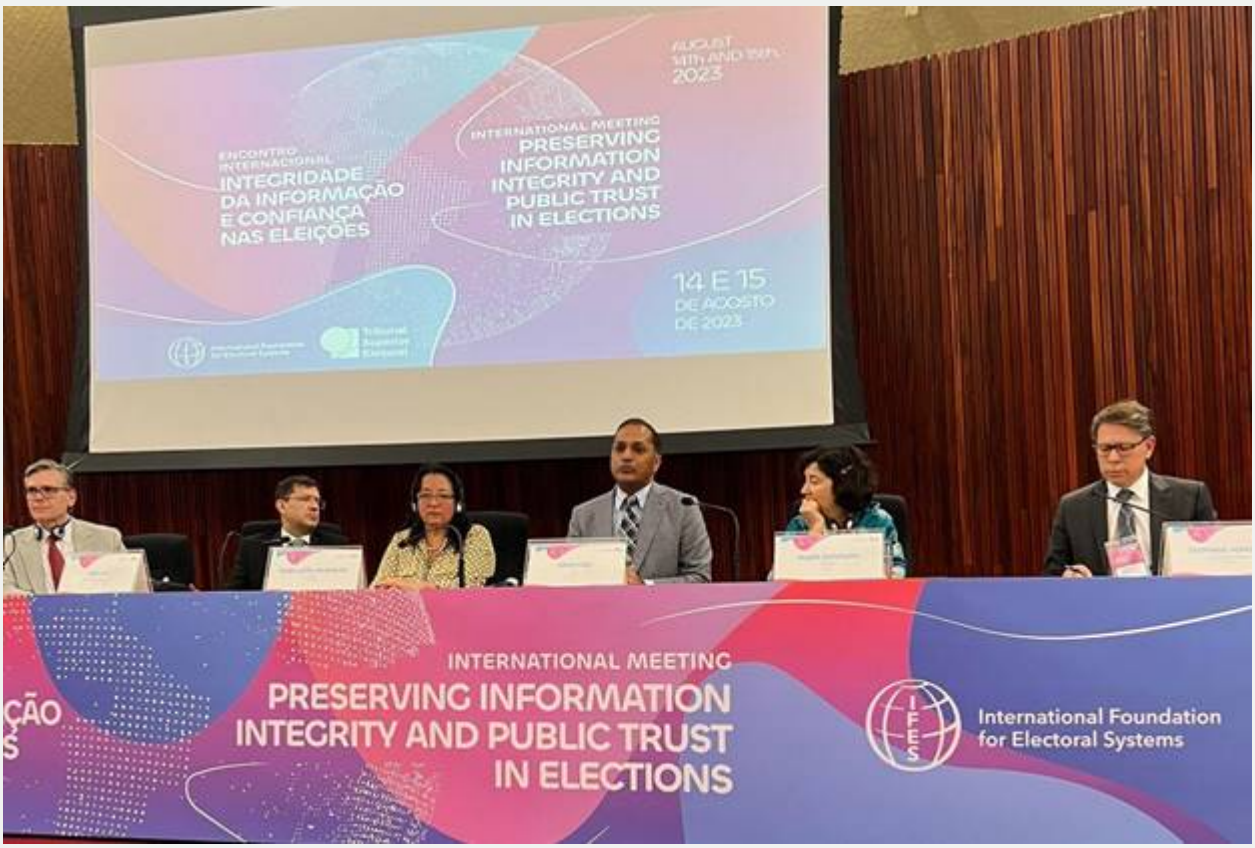
Source : www.pib.gov.in Date : 2023-08-17

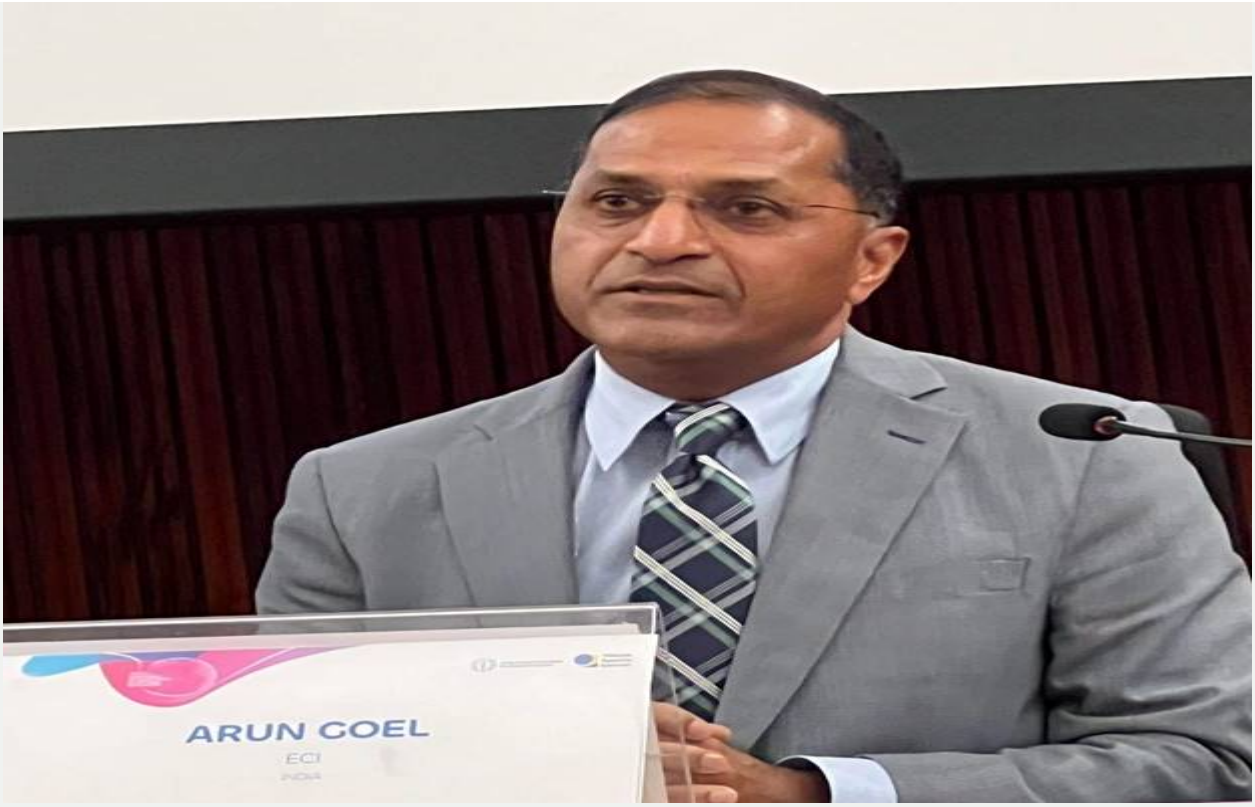
ELECTION COMMISSIONER, ARUN GOEL ATTENDS INTERNATIONAL CONFERENCE ON ‘PRESERVING INFORMATION INTEGRITY AND PUBLIC TRUST IN ELECTIONS’ IN BRASILIA, BRAZIL

Relevant for: Indian Polity | Topic: Elections, Election Commission and the Electoral Reforms in India Incl. Political Parties

The Election Commissioner of India, Shri Arun Goel, has participated in a significant international conference focused on "Preserving Information Integrity and Public Trust in Elections." The conference held in Brasilia, Brazil during August 14-15, 2023 was hosted by the International Foundation for Electoral Systems (IFES) and Tribunal Superior Eleitoral, Brazil.



Shri Arun Goel addressed the participants on “Mapping EMB Coordination and Communication with Technology and Social Media Companies'. Shri Goel shared insights, experiences and the measures taken by ECI to preserve information integrity in the digital age for conduct of free and fair elections including the Voluntary Code of Ethics for Social Media companies, that is operational since 2019 Lok Sabha Elections. While elaborating on the challenges of fake news during elections in the fast evolving communication and technology landscape, Shri Goel urged the EMBs to come together to devise Global Guidelines/Code for social media companies to safeguard the sanctity of elections.



The two day conference witnessed participation from Election Management bodies, experts, and stakeholders from different countries to engage in thoughtful discussions and exchange of ideas on critical issues related to maintaining the integrity of information in the context of elections and upholding public trust. As technology and communication channels evolve, ensuring the accuracy and reliability of information becomes increasingly crucial to the democratic process.

The conference provided a platform for participants to explore innovative strategies, best practices, and lessons learned from various countries. Discussions revolved around topics such as Institutional Strategic Planning for Information Integrity Threats; Strategic Communication and Voter Education; Crisis Communication Planning for Disinformation Threats; Coordination and Communication with Civil Society, Academia, Media, Political Parties and anticipating future threats and coordination with technology and social media companies. The exchange of knowledge and experiences will contribute to strengthening global cooperation in safeguarding democratic processes.

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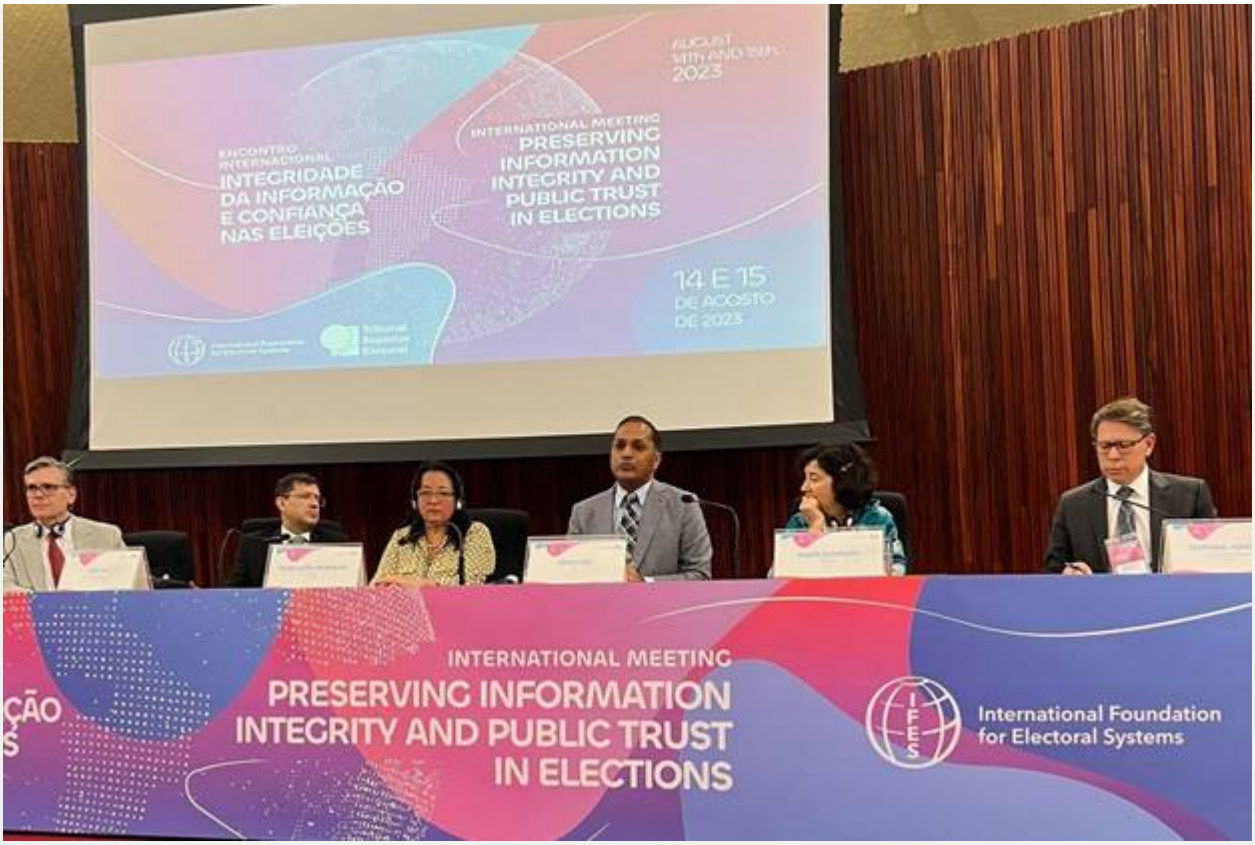

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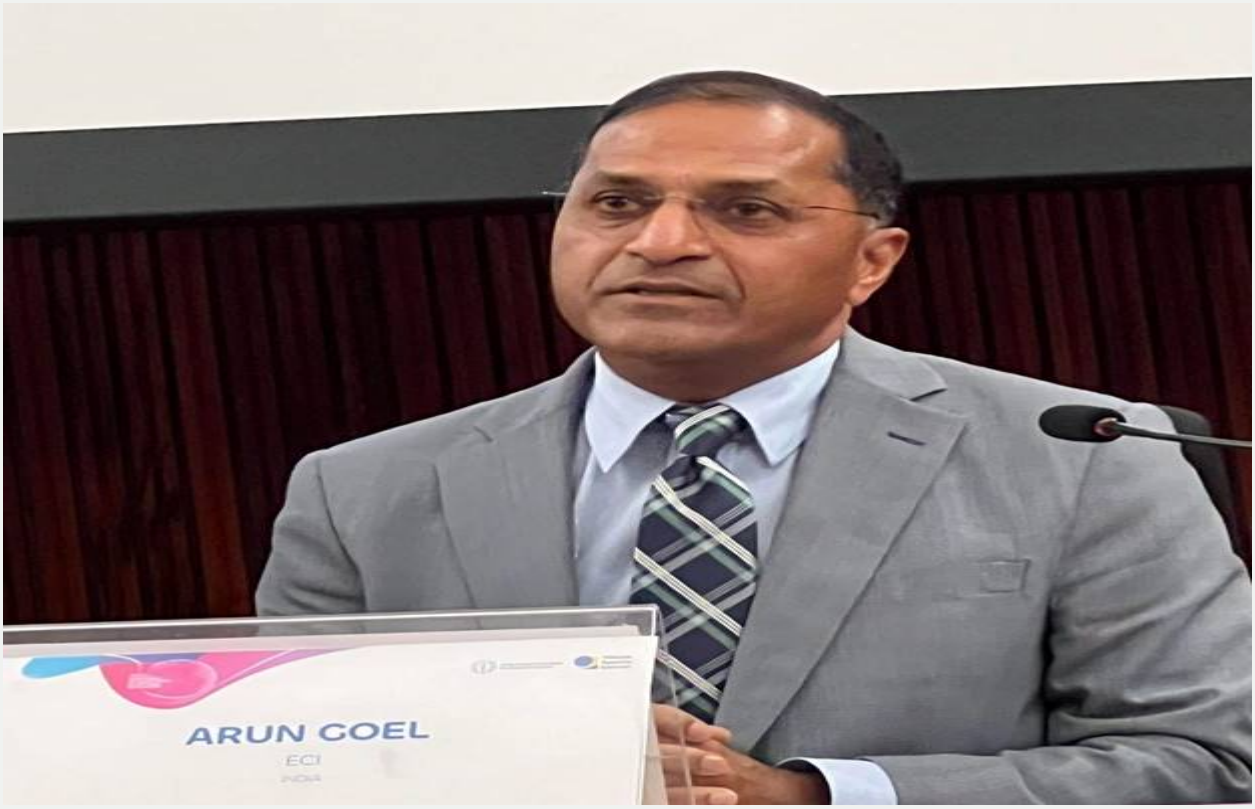

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Source : www.thehindu.com Date : 2023-08-18

IS THERE A NEED TO REPLACE THE IPC, THE CRPC AND THE EVIDENCE ACT?

Relevant for: Indian Polity | Topic: Indian Constitution - Historical underpinnings & Evolution

August 18, 2023 02:04 am | Updated 02:50 am IST

Unbridled reign: The new CrPC seems to give a lot of discretionary powers to the police, like the ‘right to handcuff’. | Photo Credit: Getty Images/iStockphoto

On August 11, 2023, Union Home Minister Amit Shah introduced three Bills in the Lok Sabha; the Bharatiya Nyaya Sanhita Bill to replace the Indian Penal Code, 1860, the Bharatiya Nagarik Suraksha Sanhita Bill to replace the Code of Criminal Procedure, 1973 and the Bharatiya Sakshya Bill to replace the Indian Evidence Act, 1872. The proposal raises questions on whether the existing laws were being misused for them to be changed, and the amendments made in the new Bills. In a conversation moderated by **Sonam Saigal, Prakash Singh** and **Shahrukh Alam** discuss whether the existing laws need to go. Edited excerpts:

How different are the new Bills different from the prevalent laws?

Prakash Singh: It is true that the Indian Penal Code (IPC), the Code of Criminal Procedure (CrPC) and the Indian Evidence Act were fully operational, their sections were utilised in the criminal justice system and the public had become used to it. But it would be an exaggeration to say that they reflected the changing values and the democratic aspirations of the people. Much water has flowed down the rivers ever since the IPC was enacted in 1860. The entire socio-economic scenario and political complexion have changed. I think a need was felt that these laws should reflect the change. What they (the government) have done is undertake a tremendous exercise. For example, in the IPC, 175 sections have been amended, eight new sections have been added and 22 sections have been repealed to generate the Bharatiya Nyaya Sanhita Bill.

Editorial | **Rebooting the codes: On the IPC, CrPC and Evidence Act**

Shahrukh Alam: It is very true that the codes (IPC, CrPC and Evidence Act) probably did not fully reflect the changes in society. But there seems to be some ambiguity about how these news laws would relate to all the precedents, jurisprudence and case laws that were developed on the basis of the old codes.

There is a debate going on across the world in terms of criminal justice jurisprudence, which talks about keeping someone in detention without being charged. In Scotland, the amount of time for which you can keep someone in detention without bringing charges against them is six

hours. However, in our country, it was 60 days and the new Bill proposes 90 days. So, it seems we are going in the opposite direction. The new CrPC seems to have formalised this principle not just for acts related to terrorism, but for any IPC offence.

Explained |**Sedition 'repealed', death penalty for mob lynching: the new Bills to overhaul criminal laws**

The new CrPC also seems to give a lot of discretionary powers to the police, like the 'right to handcuff' which we have never had in India. Now there's discretion to handcuff, to arrest women after sunset in exceptional circumstances, and to use any force and means necessary when arresting a person. That could legitimise encounters and all kinds of violence.

The new Bharatiya Nyaya Sanhita Bill allows custody from 15 days which can go up to 90 days. As a former police officer, do you think it is needed?

Prakash Singh: There is a general consensus that these Bills should not be pushed in a hurry. Now that the Bills are in the public domain, let the general public comment on them.

Opinion | **New Bills and a principled course for criminal law reforms**

As far as handcuffing is concerned, I don't think anyone understands how big of a concern it is for the police. It is alright for the Supreme Court to say in the D.K. Basu vs State of West Bengal (1996) case that people should not be handcuffed. But if you see the practice in many democratic countries, there are stringent provisions about handcuffing. I have seen heads of state being handcuffed. In India, even if a man is a member of the mafia, you can't handcuff him. And then why should you force me (the police) to touch somebody? He may be suffering from some skin disease. One doesn't know how filthy or dirty he [the accused] is, so I don't want to hold him by his hand.

Shahrukh Alam: This (right to handcuffing) has become part of the actual provision in the Bill. So we have gone past the stage of debate. Case laws like D.K. Basu and Kedar Nath Singh vs State Of Bihar (1962) (judgment by the Supreme Court of India that upheld the validity of sedition), have set down some laws.

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But the new Bill causes a rupture. This is a repeal and a revocation. This is not an amendment.

What would you say are the similarities between the existing laws and the new Bills?

Shahrukh Alam: I think the new Bills are very similar to the existing laws. Violence is still going on and detention without charges is still going on. The Bills endorse, legitimise and formalise these practices, so there is no substantial departure. Substantive sections have been jumbled which has caused more ambiguity and confusion. For instance, the Bill replaces sedition with 'subversive activities', which makes it very vague and broad. Terrorist acts have also been defined under the new Bills, even though we have special legislation like the Unlawful Activities (Prevention) Act (UAPA). Also, if you damage property, that could constitute a terrorist act. Another section talks about provocation and intimidation of the government. But anything can provoke the government, and that would be considered a terrorist act.

Also read | **New criminal laws portend great danger to democracy, says Teesta Setalvad**

Prakash Singh: A lot of it is old wine in new bottles. But of course, there are changes. The Bills

have introduced certain new sections. For example, in the Bharatiya Nyaya Sanhita Bill, terrorism has been defined, organised crimes have been added, and sedition has been repealed. ‘Subversive activities’ have been added and it needs to be defined. There are new provisions regarding community service; mob lynching has been defined as an offence; stricter punishment has been proposed for crimes against women.

But what is worrying me the most is that the number of important sections have been changed. For example, Section 302 of the IPC will become Section 101 and Section 420 will become Section 316. For the last 164 years that we have had the IPC, these Sections are there in the public mind. The whole of India knows that Section 302 is murder, 420 is cheating, 379 is punishment for theft and 395 is punishment for dacoity. By changing the numerical figure, the documentation is going to be a huge problem in the National Crime Records Bureau and Crime and Criminal Tracking Network and Systems. I wish some sections that are very common and are in the public consciousness are retained.

Usually, laws are changed when they become obsolete. Are there any provisions in the IPC, CrPC and the Indian Evidence Act that, according to you, are being misused?

Prakash Singh: Certain sections are misused, but the misuse of an Act does not make it irrelevant. You have to find ways to prevent the misuse.

Also read | **New criminal laws will have no bearing on UAPA and MCOCA: official**

Shahrukh Alam: The courts had already decriminalised consensual sex between adult gay men. Section 377 was read down but non-consensual sex was still an offence. However, the removal of the Section in the new Bill leaves no scope for prosecuting rape in the case of adult men, or transsexual people. The new rape provisions are gendered and apply only to women. Also, the new Bill reflects a lot of issues that have come up in political debates recently. For instance, mob lynching has been recognised as a separate offence in the new Bill and the sentence is seven years. It is a fact that people are being killed for who they are. But interestingly, again, it has become discretionary. The sentence ranges from seven years to life sentence and death.

On the other hand, Love Jihad, which has been defined as ‘concealing your identity before marriage’ in the Bharatiya Nyaya Sanhita Bill has been made into a separate offence and the sentence is 10 years. In the same Bill, sexual offences are a separate chapter, but that is limited to sexual offences with respect to women. It [the government] has forgotten about sexual offences perpetuated by men on men or women on women.

Are there welcome changes in the new Bills?

Prakash Singh: Yes certainly. The fact that they have attempted to define terrorism, is a step in the right direction. It is good that organised crimes have been defined. Once the trial concludes, the judgment has to be given within 30 days and only two adjournments are allowed. I think these are welcome changes with the intention of expediting the criminal justice system.

Shahrukh Alam: There are some provisions that say if you can’t finish the trial within six months in petty offences, then that person will not be tried. So that is welcome. But this pertains to only petty offences and has not been linked with serious offences.

Substantive sections have been jumbled which has caused more ambiguity and confusion. For instance, the Bill replaces sedition with ‘subversive activities’, which makes it very vague and broad.

Prakash Singh is a former IPS officer and Shahrukh Alam is an advocate at the Supreme Court.

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Source : www.thehindu.com Date : 2023-08-18

WORD CHOICE IN INDIA'S DATA PROTECTION LAW AND A DILUTION OF RIGHTS

Relevant for: Indian Polity | Topic: Indian Constitution - Features & Significant Provisions related to Fundamental Rights, Directive Principles and Fundamental Duties

August 18, 2023 12:08 am | Updated 01:11 am IST

'We need to look at two basic features of any data protection law: the use of personal data with consent and without it' | Photo Credit: Getty Images/iStockphoto

After years of going back and forth on its contents, India finally has a data protection law, i.e., the Digital Personal Data Protection Act, 2023. While small steps forward may be better than inertia or taking giant and hasty leaps, figuring out how far this law will take us requires that we understand how it protects our privacy in everyday situations and routinely touches our lives. In the search for an answer to this question, we need to look at two basic features of any data protection law: the use of personal data with consent and without it.

The classic problem in data protection is the standard for consent. When your data is being used, do you have a choice in the matter? For example, your Internet activity can be used to study you. An app could find out your religion from what you eat, your health status from your physical activity, or your sexuality from your movie preferences. Maybe you have given your phone number to a business while making a purchase, but do not want to be bombarded with marketing calls.

As decades of experience in India and other jurisdictions tell us, these are standard situations that even the most minimal data protection law must address. How does India's new law deal with such problems? There are two relevant provisions in the Act. One says that you should be properly informed about what you are agreeing to and only clear positive actions by you (as opposed to silence) will be taken to indicate consent. But this strict provision is undercut by a second provision permitting use of your data if you have "voluntarily provided" it and "have not indicated" that you do not consent. The choice of words is telling. If you "have not indicated" refusal, governments and businesses can assume your consent for various uses without notifying you. And who is to say you do not "provide" your data simply by visiting a public place or website, or making an online account? After all, "provide" is not the same as "share" or "transfer". This ambiguity will result in confusion in courts as well as business uncertainty about the correct standard for consent. In all likelihood, the weak standard will gobble up the strong one.

It should be apparent, however, that personal data cannot always be used with consent. For instance, a person's choices regarding their data can get in the way of various public functions

involving verification of identity, targeting of welfare benefits and implementation of laws. These functions can be thwarted by misrepresenting or withholding information. But does that mean there is no protection for such data? In previous drafts of the new law, your personal data could be used without consent only if it was “necessary” for a specified purpose in carrying out certain legitimate state functions, meeting legal requirements, and dealing with emergencies. The data fiduciary needed to demonstrate that they had no feasible alternatives to collecting and using the information in the manner that they had.

It is important to understand the significance of this: sometimes, consensual processing of data is very much feasible, if inconvenient. Even if consent is not feasible, specific methods of identity verification, or the use of sensitive data on health, religion, political affiliation, and sexuality may not be strictly necessary when designing and implementing many kinds of public programmes. For example, information on membership in a trade union is not necessary in assessing a job application, even if the employer thinks it is relevant for their purposes. If data is allowed to be processed even when it is not necessary, those doing so will always choose the more convenient route. Privacy will always be low priority. This is exactly what the 2023 law does — it allows processing without consent when it is “for” (and not “necessary for”) certain legitimate uses. This small change in wording will make a huge difference in the actual level of protection provided.

What is more, when your data is processed without consent, you will neither be notified of this nor subsequently be able to confirm it. If you somehow find out that your data is being used, you will not have the right to get incorrect data corrected or unnecessary data erased. Data taken for one non-consensual purpose can be freely used for others. This is despite the fact that the Supreme Court of India has held principles such as necessity and purpose limitation to be a part of the right to informational privacy.

Editorial | Falling short: On the Digital Data Protection law

Others elsewhere have raised serious concerns about the way the new law deals with the rights to information and free speech, surveillance reform, and the regulatory structure. On the other hand, while the issues described in this article may seem like legal technicalities, they are in fact conscious policy choices substantially diluting rights that could otherwise have been provided for.

If we want this law to meaningfully protect personal data, it is essential that we find ways to tackle these shortcomings.

Sunetra Ravindran is a Team Lead at the Vidhi Centre for Legal Policy. Lalit Panda is a Senior Resident Fellow at the Vidhi Centre for Legal Policy. The views expressed are personal

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THE GAPS IN THE BIRTHS AND DEATHS REGISTRATION (AMENDMENT) ACT

Relevant for: Indian Polity | Topic: Indian Constitution - Amendments, Schedules, and Important Articles

August 18, 2023 12:16 am | Updated 08:33 am IST

‘These databases are to provide information to update the National Population Register, the Aadhaar database, electoral rolls, ration card, passport, and other databases at the national level, as may be notified’ | Photo Credit: PTI

The Registration of Births and Deaths (RBD) Act, 1969 provides for compulsory registration of births and deaths under a uniform law across India. Experience of its working indicates that it is necessary to amend it for several reasons, and things could be changing as a Bill to amend this Act — called the Registration of Births and Deaths (Amendment) Bill, 2023 — for the first time since its inception, has been passed by Parliament and has got the assent of the President of India.

One of the major objectives that has been stated in the ‘Statement of Objects and Reasons’ attached to the Bill is “to create a National and State level database of registered births and deaths which would help in updating other databases resulting in efficient and transparent delivery of public services and social benefits”.

For this purpose, the Bill makes it compulsory that the Registrar General of India maintains a national level database of births and deaths, and that the Chief Registrar of births and deaths in every State is required to maintain a State-level database of registered births and deaths ‘using the portal approved by the Registrar General of India’. These databases are to provide information to update the National Population Register, the Aadhaar database, electoral rolls, ration card, passport, and other databases at the national level, as may be notified.

In the case of birth, the amendments provide for collecting the Aadhaar number of the parents. Nothing is mentioned about the Aadhaar number of the deceased. Updating many of the databases would require removing the names of the deceased from the database. If the Aadhaar number of a deceased person is not collected, it would be impossible to achieve this objective. This means that the laudable objective of ensuring ‘efficient and transparent delivery of public services and social benefits’ would remain a dream.

Do we need the central and State databases of births and deaths? The registration hierarchy is the responsibility of State governments, with the Registrar General of India having only the role of coordination and unification of the registration system.

The maintenance of the central database is being added to the Registrar General of India's functions. The Chief Registrars are the executive authorities for the matters relating registration of births and deaths in the States. They need to maintain a database for efficient delivery of services of providing birth and death certificates and are doing so in many States even now.

The national database is going to be nothing but a collection of State-level databases, except for some data items that some States may have in addition to the national standards prescribed by the Registrar General of India. So, if the authorities maintaining other databases require information on births and deaths, it is possible to design a system wherein the required data flow to their databases on a daily basis or even a real time basis from the State-level database. The Registrar General of India needs to specify the standards for the data structures and transfer protocols. So, what is the need for a national-level database?

It is provided that this database at the central level be made available to authorities dealing with the maintenance and preparation of databases relating to the population register, electoral rolls, Aadhaar number, ration card, passport, driving licence, property registration and such other databases at the national level, as may be notified.

If those authorities require information from the database of registered births and deaths to update their databases, it requires amendment in the laws or executive orders under which they are maintained. The RBD Act only needs an enabling provision to share information from the database. Even that may not be necessary as the birth and death registers are considered public documents.

Listing a few databases for consideration by Parliament and leaving future additions to the government is demeaning to Parliament in a way. New additions to the list later may be more dangerous than those listed and approved by Parliament. For example, the government can now decide that a list of women whose third or higher order birth is being registered be prepared and given to the Family Welfare department for follow up on family planning programmes.

With regard to the facilities available now, the State government could decide that a cause of death certificate should be issued by the medical practitioner who attended the deceased person so that the certificate can be sent along with the death report. The areas/hospitals where such a certificate has been made mandatory varies across States, but is generally restricted to deaths in medical institutions. The amendments make it compulsory that for all deaths in medical institutions, a cause of death certificate be sent to the Registrar of Births and Deaths and a copy of the certificate is provided to the closest relative. For deaths that occur outside hospitals, the medical practitioner who attended to the deceased during the person's recent illness has to issue such a certificate. This is fraught with problems:

First, the medical practitioner may not have always arrived at a definite diagnosis before the person died.

Second, the forms for cause of death that are being used are in conformity with World Health Organization recommendations. If the deceased was attended by a practitioner of the AYUSH (Ayurveda, Yoga and Naturopathy, Unani, Siddha, Sowa Rigpa and Homoeopathy) systems of medicine, the cause of death recorded may not be usable for cause of death statistics since they may not be classifiable under the International Classification of Diseases.

Third, a person who was under treatment for a certain disease can die of an entirely different cause outside a medical facility when the medical practitioner was not available for consultation. How can the practitioner be expected to issue a certificate of cause of death in such cases?

Fourth, while Section 17 of the Act prohibits the inclusion of cause of death in any certificate issued under the Act, it now says that the cause of death certificate should be given to the relative of the deceased. These are contradictory as the cause of death in the death register is taken from the same cause of death certificate issued by the medical practitioner

It is provided that the birth certificate alone would be accepted as proof of date and place of birth for many purposes such as school admission, issue of passport, and issue of Aadhaar number. This may not require any amendment in this Act or any other Act. It should be possible to achieve this through amendments in the rules relating to those databases or even executive orders. For example, while applying for passports, it was compulsory to have the birth certificate for those born after January 26, 1989 under the relevant rules. The present government removed this requirement in December 2016.

When natural calamities or accidents occur, several persons are reported missing; many of them may have died too. It has been seen that the police would have to call off the search for them after some time. However, the families of such persons would have to wait for seven years to request for a certificate that says ‘presumed dead’. A provision could have been inserted in the Act to register a ‘presumed death’ when it is reasonable to assume that the person would have died in the calamity or accident. This would help the family concerned get the death certificates earlier.

K. Narayanan Unni is a retired officer of the Indian Statistical Service and former Deputy Registrar General (Civil Registration)

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DECODING THE PRESIDENT'S SPEECH

Relevant for: Indian Polity | Topic: The President and the Vice-President of India

August 22, 2023 12:15 am | Updated 12:15 am IST

President Droupadi Murmu addresses the nation on the eve of the 77th Independence Day, on August 14, 2023. | Photo Credit: PTI

In her address to the nation on the eve of this Independence Day, President Droupadi Murmu said, "Our Constitution is our guiding document". At this time of great political and ideological contestation, it is reassuring to hear the Head of State forthrightly say these words. This is because they connote that neither the ideologies nor the politics of different political parties and formations should go beyond the boundaries set by the Constitution. Besides, this crucial sentence in the address was a simple and lucid declaration that India would steadfastly remain a constitutional democracy.

President Murmu struck many notes in her address which represent India's current national needs as well its aspirations for a better world. Among these she focused on living in harmony with nature, the empowerment of women, and the value of education in social transformation. Her words on education were based on her own experience. As she put it, "Having been a teacher also, I have realised that education is the greatest tool of social empowerment". The President also dwelt on India's economic progress. More importantly, even as she encouraged the nation, she reminded it of the long distance that remains to be covered till we achieve the aspirations of the leaders of the freedom movement.

Amidst points covered in her address, two deserve special analysis. One goes to the heart of the present ideological contestation; the other to the Constitution as a "guiding document" and the aspiration, as the President eloquently said, of moving forward towards "making India an inclusive and developed nation by the year 2047".

The first point. Government leaders have mentioned, both in domestic and foreign forums, that India has suffered 1000 years of slavery. This is in keeping with the ruling dispensation's interpretation of Indian history of what is commonly referred to as the 'Medieval Period'. Prime Minister Narendra Modi said in his Independence Day speech: "...Our country was invaded 1,000-1,200 years ago. A small kingdom and its King were defeated. However, we would not have known that this event would lead India into a thousand years of subjugation". It is not clear which invasion Mr. Modi had in mind. What is important is the reference to "a thousand years of subjugation".

In the past, government leaders did not venture into stigmatising the medieval era as one of foreign domination and enslavement. Such a categorisation was limited to the colonial period.

Consequently, liberation from foreign rule meant freedom from British rule. President Murmu seems to have favoured this traditional interpretation. She avoided any mention of “a thousand years of subjugation”. Her choice of words indicates that, for her foreign domination means the period of British rule. This is illustrated by the following formulation in her address: “India is the mother of Democracy and since ancient times we had democratic institutions functioning at the grass roots. But long years of colonial rule wiped them out... We won freedom from foreign rule... With our independence began the era of foreign rulers withdrawing from many colonies and colonisation drew close to its end”.

Now, the second point. President Murmu wisely reminded all Indians that their identity as “citizens of India” was above all their other identities. At the same time, she recognised that “each of us has many identities”. In view of the vastness of India and its huge population — we are now the world’s most populous country — it cannot but be so, but as the President said, they are subsumed within our Indian identity. Indeed, can there really be a higher status for those who live in this great land than that of “citizen of India”? Among the identities the President mentioned were caste, creed, language, region, family, and profession. What was significant was that she omitted religion as an identity marker. She did not even use the word faith. It can be argued that creed embraces religion or faith. However, while a creed may form part of a religion, the two are not synonymous. This is also made clear by the President’s speech in Hindi when she used the word “panth” instead of “dharma”.

The use of these different words is part of the ideological contestation underway. As the President said, the Constitution is the nation’s guiding document and the terminology used in it should prevail. This writer would humbly submit that as the first citizen of the country, she should follow the words used in the Constitution. The Constitution mentions religion and faith, not creed. And the Hindi translation of religion in the official Hindi version of the document is dharma, not panth. Dharma is also the word used in Hindi for faith, which finds mention in the Preamble to the Constitution.

Can the submissions put forward here regarding the use of words be categorised as merely quibbling or nitpicking? This writer believes that this is not so because some words acquire the position of ‘code words’ and become markers for ideologies. Besides, words matter, especially when used by the highest constitutional authority of the country. The President’s life story is truly inspirational. In the midst of great personal tragedies, she has maintained a calmness that reflects that she has imbibed what Krishna taught Arjuna before the war began. The nation needs from her equanimity, care and constitutional precision amid the raging political and ideological battles.

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Source : www.thehindu.com Date : 2023-08-22

DEEP IN DISARRAY: ON THE LARGER MESSAGE FROM THE LEGISLATIVE ASSEMBLY OF MANIPUR NOT BEING CONVENED

Relevant for: Indian Polity | Topic: State Legislatures - structure, functioning, conduct of business, powers & privileges and issues arising out of these

August 22, 2023 12:20 am | Updated 07:40 am IST

That the Legislative Assembly of Manipur was not convened on Monday, as recommended by the Council of Ministers, is an indication of how grave the crisis gripping the State is. Governor Anusuiya Uikey did not issue the notification summoning the House, even though the Cabinet had advised her on August 4 itself to call for the session on August 21. The delay on the part of Raj Bhavan in issuing the notification is presumably due to the political and law and order situation in the State. Legislators of Kuki ethnicity, across party affiliations, have expressed their inability to attend the Assembly session due to the prevailing atmosphere, as violence continues in parts of the State. It is unlikely that the Governor is unaware of the constitutional position that she is bound by the advice of the government with regard to summoning the Assembly. A Constitution Bench had made this clear in Nabam Rebia (2016). Whether the Governor is guided by her own wisdom or the Union government's assessment of the situation, it is difficult to justify the failure to hold the Assembly session as sought by the Council of Ministers. The last session of the Manipur Assembly was held in March, and the House has to meet again before the expiry of six months from its previous sitting. The period ends on September 2.

There have been both political and civil society demands for the Assembly to meet and discuss the violence that broke out early in May over a High Court order that directed the Manipur government to respond to a communication from the Union Ministry for Tribal Affairs on recommending the grant of Scheduled Tribe status to the Meitei community. The delay on the Governor's part in notifying the session casts a shadow on the legitimacy and authority of the government headed by Chief Minister N. Biren Singh. The Governor would be well-advised to act on the Cabinet's recommendation. On another issue, there appears to be an unusual delay in the appointment of Justice Siddharth Mridul, a judge of the Delhi High Court, as the Manipur High Court's Chief Justice. The court has been under an Acting Chief Justice for several months now. Reports suggest that the Centre has forwarded the Collegium's recommendation to the State government for its consent. The question arises whether any constitutional functionary in the State is holding back the process. The chain of events set off by an order passed by the Acting Chief Justice has already witnessed much violence and disorder, and the State should not lapse into further constitutional disarray.

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FESTERING WOUNDS: ON MANIPUR'S ELUSIVE PEACE

Relevant for: Indian Polity | Topic: State Legislatures - structure, functioning, conduct of business, powers & privileges and issues arising out of these

August 23, 2023 12:20 am | Updated 12:20 am IST

More than three months since ethnic violence broke out in Manipur, there are still little or no signs of lasting peace. From competing groups imposing blockades of arterial roads to sporadic attacks resulting in deaths, the conflict is rife with incidents suggesting the breakdown of law and order. Another indication of the state of affairs is the difference in perceptions between the police and the paramilitary Assam Rifles with unedifying acts such as an FIR being lodged by the police against the latter for "obstructing" it from discharging its duties. Far from moving away from the ethnic quagmire and in search of a détente, the situation is more like a powder keg. That people are still in relief camps and many houses have been destroyed, and anyone seeking peace has been subjected to violence or threats also attest to this unfortunate fact. India's mainstream polity had an opportunity to use the monsoon session of Parliament to nudge key stakeholders to work towards reconciliation. But that opportunity was seemingly lost, as Prime Minister Narendra Modi and Home Minister Amit Shah had little to say beyond homilies on what needs to be done even as the Opposition only sought to pin down the government for its failures as a means to score a political point in the run-up to the 2024 Lok Sabha election.

The events in Manipur so far suggest that the ethnic conflict festers because of the intractable positions by the Meitei and Kuki-Zo leaders. The Meitei refuse to acknowledge the sense of bias in the State government's actions — especially by Chief Minister N. Biren Singh — that have alienated the Kuki-Zo and its representatives, cutting across party lines. The latter seeks to harp on the idea of a "separate administration", complicating the fragile co-existence of ethnic identities in the State which include others such as the Naga community. The refusal of civil society representatives to rise above their ethnic differences has also exacerbated the conflict, which has worsened due to the lack of accountability of the State government and its refusal to change its leadership — a step that seems to be the only clear possibility of bringing forward reconciliation. Manipur is a vital border State and the continuing distrust between the Meitei and Kuki-Zo will have a lasting impact on future generations, severely hampering progress. The Union government's choices are clear: it can either continue the narrow-minded emphasis on not giving into any critique, even if constructive, and let the situation fester into an uneasy stasis, or take up the gauntlet and bring about substantive changes in the State leadership, heralding steps towards reconciliation.

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A STRONG CASE TO RESTORE SECTION 8(4) OF THE RP ACT

Relevant for: Indian Polity | Topic: Issues and Challenges Pertaining to the Federal Structure, Dispute Redressal Mechanisms, and the Centre-State Relations

August 23, 2023 12:16 am | Updated 12:16 am IST

‘The issue of instant disqualification needs to be addressed urgently’ | Photo Credit: Getty Images/iStockphoto

Rahul Gandhi of the Congress party was disqualified on being convicted and sentenced to two years imprisonment in a 2019 defamation case. The disqualification was instant because of the Supreme Court of India’s judgment in Lily Thomas vs Union of India (2013). Through this judgment, the Court invalidated Section 8(4) of the Representation of People Act 1951, which had allowed a three-month period within which to appeal. Disqualification was not to take effect during this period; when the appeal is admitted, disqualification would depend on the final outcome of the appeal.

Thus, under the legal provision cited, there was no instant disqualification of sitting members of the legislature. But after the Court struck down this provision of the Representation of People Act 1951, according to the opinion of some experts, a sitting legislator is disqualified the moment the court orders conviction and sentence under Section 8(3) of the Representation of People Act. The top court said that Article 102(1) does not create any difference between the sitting member and a candidate so far as disqualification is concerned. It held that Parliament has no power to grant exemption to sitting members for three months and thus struck down Section 8(4) as ultra vires the Constitution.

So now, only Section 8(3) remains in the Act which deals with disqualification of persons convicted and sentenced to two years imprisonment. This section simply says that a person who is convicted of an offence and sentenced to imprisonment for not less than two years shall be disqualified from the date of conviction. It does not say that such a person stands disqualified from the date of conviction. So, there is no ground indeed to conclude that the disqualification takes place the moment the court pronounces a person guilty. The only condition is that such a person shall be disqualified from the date of conviction. So, it appears that the act of the instant disqualification of Mr. Gandhi did not have a sound legal basis; particularly so when we consider the words “He shall be disqualified”, which could only mean that some authority has to officially declare him disqualified.

The opinion of this writer, which was expressed in few articles, is that the authority that/who can declare a sitting legislator disqualified could be the President of India exercising this power

under Article 103. Although the Supreme Court did not accept this proposition in Lily Thomas, in Consumer Education & Research ... vs Union Of India & Ors (2009), a three-judge Bench held that a declaration by the President, under Article 103, that the sitting member has incurred disqualification is necessary.

Thus, the scheme of Section 8(3) seems to be that when a sitting member is convicted and sentenced to imprisonment for two years or more, he shall be disqualified with effect from the date of conviction. Further, it is the President who shall disqualify him under Article 103. The Secretariat of the House to which the member belongs has no recognisable authority to declare that a member stands disqualified as soon as he is convicted by a court of law.

A question of legal importance that arose in the context of the disqualification of Mr. Gandhi was whether the stay of only sentence can lift the disqualification or whether stay of conviction is necessary. In the 1980s and 1990s, some of the High Courts (Allahabad High Court in Sachindra Nath Tripathi vs Doodhnath, 1987 and the Himachal High Court in Vikram Anand vs Rakesh Singha, 1994) had held the view that disqualification remains intact on staying the sentence. But the Madras High Court took a different view in the Jayalalithaa case (2001). It held that “the moment the sentence is suspended[,] conviction should be deemed to have been suspended or otherwise the framers of the code would have taken care to provide for stay of conviction or suspension of conviction also”. However, in Rahul Gandhi’s case, though the Supreme Court stayed the conviction, it did not express any opinion on the question of whether a stay of conviction is also necessary or on suspending the disqualification.

It must be remembered that disqualification arises only when the sentence is imprisonment for two or more years. As the Court observed in its recent order in Rahul Gandhi’s case, if the period of imprisonment was less by one day the disqualification would not have occurred. It would mean that disqualification is directly relatable to the quantum of sentence and not conviction. But this is a point the lawmakers and the judiciary will have to deal with.

The judgment in Lily Thomas can play havoc with the careers of sitting legislators in the country. Instant disqualification on conviction and sentence will upset their entire legislative career without giving them breathing space because the courts in general have a very dilatory system in dealing with appeals, revisions and such. But the case of the Agra court staying the conviction of Bharatiya Janata Party (BJP) MP Ram Shankar Katheria within 24 hours of conviction in a criminal case, thus saving his House membership is one of the rarest exceptions.

It is heartening that a court like the Agra session court exists in our country. But the issue of instant disqualification needs to be addressed urgently as it may affect the career of legislators. The Supreme Court struck down Section 8(4) on the ground that Parliament has no power to provide for a special dispensation for convicted legislators because Article 102(1) does not permit such differentiation between them and the candidates. But so far as differentiation goes, the Constitution in fact permits it under Article 103 which provides that in the case of sitting legislators, the question of disqualification under Article 102(1) will be decided by the President. Perhaps a suitable amendment can be made in Article 102 to enable Parliament to restore the invalidated Section 8(4).

In fact, the judgment in Lily Thomas has not resulted in any perceptible qualitative change in the criminal proclivity of politicians. Politicians belonging to the powerful ruling dispensation at a particular time may be able to get a conviction stayed within a few hours, thus saving themselves from instant disqualification. But others will have to wait like Mr. Gandhi had to for four months and for the intervention of the Supreme Court just to get a stay on conviction in a defamation case which is non-cognisable and bailable. This and other cases show that Section 8(4) needs to be restored and protected constitutionally in order to protect the careers of India’s

legislators from abrupt convulsions caused by court orders which are given, in the words of the Supreme Court, “without any application of mind”.

P.D.T. Achary is former Secretary General, Lok Sabha

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SHOULD THE CJI BE PART OF THE COMMITTEE NOMINATING THE CEC?

Relevant for: Indian Polity | Topic: Elections, Election Commission and the Electoral Reforms in India Incl. Political Parties

August 25, 2023 12:15 am | Updated 01:33 am IST

Polling officials collect EVMs in Rural Bengaluru on May 9, 2023, on the eve of the Karnataka Assembly elections. | Photo Credit: AFP

On August 10, the Union government introduced a Bill in the Rajya Sabha that proposed that the selection panel for appointing the Election Commission, comprising the Chief Election Commissioner (CEC) and other Election Commissioners (ECs), will consist of the Prime Minister as the chairperson, the Leader of the Opposition as a member, and a Union Cabinet Minister nominated by the Prime Minister as another member. In March, the Supreme Court had ruled that the selection panel should comprise the Prime Minister, the Leader of the Opposition, and the Chief Justice of India (CJI) until Parliament enacts a law on the manner of appointment. The Opposition has been arguing that the replacement of the CJI with a Cabinet Minister in the Bill indicates that the government is trying to make the poll body a puppet. Should the CJI be part of the committee nominating the CEC? **O.P. Rawat** and **Jagdeep Chhokar** discuss this issue in a conversation moderated by **Sreeparna Chakrabarty**. Edited excerpts:

According to the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023, a Cabinet Minister will be part of the selection panel instead of the CJI. This means that there will be two members from the ruling dispensation on the panel. Does this affect the neutrality of the panel?

O.P. Rawat: The issue before the Supreme Court was not who will be on the selection committee; it was why did you [the government] not enact a law as promised or as laid down in the Constitution. So, [the Court said], you make a law, [but until] then, our suggested panel will select the CEC and ECs. In the Constitution, Parliament is the supreme law-making body and the Supreme Court has the power to judicially review the constitutionality of every law. So, I don't think there is any issue in this.

Talking Politics with Nistula Hebbar | Why is the Law Ministry's Bill on appointment of Election Commissioners controversial?

Jagdeep Chhokar: I agree with Mr. Rawat that the Court had said that Parliament should make a law and that until such a law is made, the composition of the committee would be as given in the judgment. But I would also like to add that this was the direction of the Court and in every

judgment, the Court is also expected to explain the rationale for its decision. In the [March] judgment, the Court expended a lot of time and energy on why this law needs to be made. And the fundamental rationale was that the Election Commission is a crucial entity for the existence of democracy. As a matter of fact, the judgment says that the right to vote is a fundamental right, effectuated by the Election Commission through the conduct of elections. And therefore, to ensure that this right can be exercised properly, the Election Commission has to be independent of the executive. So, while the Bill, as proposed, follows the letter of the judgment, it does not at all follow the spirit of the judgment. This is a major issue with the Bill.

Is there is any substance to the perception that the Election Commission will now be more amenable to the executive's wishes?

O.P. Rawat: In another judgment in July 2017, when there was no law and the executive used to appoint the CEC and ECs, the Supreme Court observed that although Parliament has not enacted any law for the appointment of the CEC and ECs, the appointments of the CECs and ECs so far have been fair and politically neutral. It was from the same system that we had Sukumar Sen, who conducted the first election in independent India. Due to Partition, a large number of people had come from Pakistan and electoral rolls had to be prepared. It was a huge issue, for until then, the Government of India's voter list had just about four crore voters, but in the first voter list after Independence, there were 17 crore voters. Despite all those difficulties and with the literacy level being really low, Sen conducted a sterling election. The British had said that by giving universal suffrage, India will undo itself. He proved them wrong. T.N. Seshan was also a product of the same system.

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In case there is apprehension [of the Election Commission being more amenable to the executive's wishes] after the law is passed, the Supreme Court has the power to judicially review it. So, I don't think there is any problem.

Jagdeep Chhokar: While there have been sterling examples like Mr. Rawat himself, there have also been many instances where the conduct of the Election Commission has been questionable and far from satisfactory. There was an Election Commissioner, Ashok Lavasa, what happened to him? He was in line to become the CEC and had to resign or decided to resign. And this happened as a result of the system. So, the system of the executive appointing the ECs and that too purely from the bureaucracy, is not the healthiest. And the way this Bill has been prepared is contrary to the intention or rationale or justification of the Supreme Court's judgment in March. Only time will tell whether the independence of the Election Commission will be compromised or not. But in the last few years, the perception in the mind of at least some people is that the Election Commission is not doing what it ought to be doing.

So, does this Bill in any way override the Supreme Court ruling of March?

O.P. Rawat: Not at all, because the Court had asked why Parliament had not enacted a law. Now, this [Bill] will have to be debated in Parliament. Whether it is passed or not is another issue.

The Bill says that the salary of the CEC would be equivalent to that of the Cabinet Secretary. As of now, the salary is equivalent to that of a Supreme Court judge. Though the amount is the same, does this mean that the rank of the CEC is being downgraded?

O.P. Rawat: I don't think it is a downgrade in the matter of salary because the salaries are the

same for a Supreme Court judge and a Cabinet Secretary. But if you see this in the context of other constitutional bodies like the Union Public Service Commission (UPSC) and the Chief Information Commissioner (CIC), which have been downgraded, you feel that constitutional bodies are being continuously downgraded. A UPSC member is now equal to a Secretary to the Government. The CIC's tenure has been brought down from five years to three, and they are also equivalent to Secretaries. So, one feels that this will or this may give rise to some sort of dilution in their status and have a commensurate effect on performance.

Also read | **A person weak-kneed before the powerful cannot be appointed as Election Commissioner: Supreme Court**

Jagdeep Chhokar: I agree. The money is not as critical as the status of a position. If the salary is the same, where is the need to say that it will now be equivalent to that of the Cabinet Secretary? I find it mysterious. If you give the same salary but peg the status at a different level, at least in perception, it is unnecessary and undesirable. Unless of course, this is being done with a certain objective, which I am not aware of.

The CEC is removable through the same procedure as a Supreme Court judge, but other ECs don't have the same security of tenure. They can be removed on the CEC's recommendation. Does this Bill have any provision on this?

Jagdeep Chhokar: Yes, which is good. It says that the other ECs will also have the same removal procedure as the CEC or the Supreme Court judge. This is one of the two positive provisions in this Bill.

Explained |**The Supreme Court's new rules for the appointment of Election Commissioners by the President**

O.P. Rawat: I disagree. The Bill is not capable of amending the Constitution. Article 324, Clause 5 of the Constitution lays down that the terms of service of the CEC and ECs will be as enacted by Parliament provided that the removal of the CEC will be as the removal of the Supreme Court judges. But both the ECs can be removed on the recommendation of the CEC by the President of India. So that proviso cannot be amended by any law of Parliament. It will need an amendment of the Constitution by Parliament. So, I don't agree with that. The provision remains the same for the removal of the CEC, which will be by impeachment by Parliament, and the removal of both the ECs will remain on the recommendation of the CEC.

The present policy is of a multi-member ECI where an existing member is promoted as a CEC based on seniority. They get a full tenure only as a whole, but usually only for two years or so as CEC. Is there any case to advocate a full tenure for the CEC in this Bill?

Jagdeep Chhokar: I think the CEC must have a six-year tenure, whether or not he has spent two or three years as an EC. The CEC is at a different pedestal than the EC under the current scheme of things. I would even go to the extent of saying that this should be independent of the age of the CEC.

O.P. Rawat is former Chief Election Commissioner; Jagdeep Chhokar is founding member of the Association for Democratic Reforms

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Source : www.thehindu.com Date : 2023-08-25

OBSERVING THE CELEBRITIES IN PARLIAMENT

Relevant for: Indian Polity | Topic: Parliament - structure, functioning, conduct of business, powers & privileges and issues arising out of these

August 25, 2023 01:15 am | Updated 01:21 am IST

In the Rajya Sabha, Jaya Bachchan has represented the film industry for long. But unlike many of her colleagues from tinsel town, she goes to Parliament regularly and participates in all the debates. File | Photo Credit: PTI

The Election Commission has conferred the status of “national icon” on former Indian cricketer Sachin Tendulkar. For the next three years, he is bound by a contract to spread awareness about the need for greater voter participation in the electoral process.

Though the intention is laudable, ironically it brings back memories of Tendulkar’s lacklustre stint in the Rajya Sabha. It particularly takes me back to the morning of March 15, 2013, in Delhi. It was my first week as a reporter of Parliament. The press gallery of the Upper House was mostly empty. Amidst the mundane announcements, Deputy Chairman P.J Kurien sought the “House’s permission to grant leave” to Tendulkar. Parliament rules stipulate that members’ leave applications are read out during a session and the House decides whether or not to grant permission. Just as the House was about to sing its customary “aye”, Samajwadi Party MP Naresh Agarwal rose unexpectedly to lob a bouncer at the absentee cricketer. “He hardly comes to the House. Why not give him permanent leave?” he joked and the entire House broke into laughter. Leave was granted and Tendulkar went on to complete his unremarkable term without “permanent leave”.

By no means is this an unusual story. But for me, a news reporter, it provided direct evidence of popular anecdotes about him. In fact, a hard-working celebrity parliamentarian is the equivalent of “a man biting a dog”. A galaxy of film stars and cricketers have entered Parliament with very little to show for it.

Actors and BJP members Hema Malini and Kirron Kher at Parliament House on June 9, 2014. | Photo Credit: PTI

The 2014 Lok Sabha, in particular, was packed with actors. Hema Malini sat on the Treasury benches among a row of women MPs. But unlike many others, Ms. Malini is a regular in Parliament. Behind her sat the ever-smiling Kirron Kher who would barely keep a straight face. A true actor, Ms. Kher would show a range of expressions, which would capture her feelings of the ongoing debate. In the back benches sat a stoic Paresh Rawal, a study in contrast. On the Opposition benches sat Bengali actor Moon Moon Sen. Malayalam actor Innocent too sat there, his eyes continuously scanning the floor of Parliament. And even when the House was fairly

peaceful, his eyes would sparkle with delight as though he was cracking a private joke. But it was the pandemonium that he revelled in. The moment his colleagues would begin agitating over a serious issue, he would tell them in Malayalam "*Chaadno* (Should I jump)?" pointing at the well of the House.

In the Rajya Sabha, Jaya Bachchan has represented the film industry for long. But unlike many of her colleagues from tinsel town, she goes to Parliament regularly and participates in all the debates. She is also the resident Santa Claus. In her capacious brown bag, she carries chocolates and mints and distributes them regularly to members of all parties.

Trinamool Congress MPs Mimi Chakraborty, right, and Nusrat Jahan. File | Photo Credit: The Hindu

In the 2019 Lok Sabha, two Trinamool Congress MPs, Nusrat Jahan and Mimi Chakraborty, increase the glamour quotient whenever they attend Parliament, which, barring the first session, has been rare. Similarly, Sunny Deol, a Lok Sabha MP, has only occasionally been seen. Both the Houses have had a fair share of cricketers. In the Rajya Sabha, Harbajhan Singh, an AAP MP from Punjab, dresses sharply, but struggles with parliamentary practices. His colleagues handhold him through the tough overs.

Journalists patrol the corridors in search of news stories. Occasionally this also means that we get to overhear interesting conversations. In July 2019, the Opposition and Treasury benches were arguing about the Triple Talaq Bill. Both sides were pulling out all the stops to ensure that they had the numbers. Full attendance was essential. I overheard a Union Minister chiding a national athlete who was a nominated member in the Upper House. He told her that she must be present for the voting. The athlete, who was not in a position to retort, walked off. While Tendulkar had the option of taking leave at will, she apparently did not.

Source : www.thehindu.com Date : 2023-08-26

RETHINK THE EMERGING DYNAMICS OF INDIA'S FISCAL FEDERALISM

Relevant for: Indian Polity | Topic: Issues and Challenges Pertaining to the Federal Structure, Dispute Redressal Mechanisms, and the Centre-State Relations

August 26, 2023 12:16 am | Updated 12:30 am IST

'Transparency guarantees and public accountability demand that the Union, States and local governments come clean and bring all extra-budgetary transactions to the public domain' | Photo Credit: Getty Images

A 'holding together federation' with a built-in unitary bias, the Indian Constitution was the contextual product of centrifugal forces and fissiparous tendencies in the run-up to Independence. It has journeyed over 73 years with remarkable resilience. Even so, the emerging dynamics of India's fiscal federalism needs some rethinking. The paradigm shift from a planned economy to a market-mediated economic system, the transformation of a two-tier federation into a multi-tier fiscal system following the 73rd and 74th Constitutional Amendments, the abolition of the Planning Commission and its replacement with NITI Aayog, the passing of the Fiscal Responsibility and Budget Management (FRBM) Act, with all the States forced to fall in line, the Goods and Services (GST) Act with the GST Council holding the controlling lever, the extensive use of cess and surcharges which affect the size of the divisible pool and so on have altered the fiscal landscape with varying consequences on India's federalism. I raise just four issues.

One, India's intergovernmental transfer system should be decidedly more equity-oriented. Although the natural proclivity of any market-mediated growth process is to work in favour of the propertied class, the actual experience in India has been astounding. Chancel and Piketty (2019) estimate that the top 1% earners in India captured less than 21% of the total income in the 1930s, but this was drastically reduced to 6% in the early 1980s and then rose to 22% during the liberalisation era. To be sure, the tax exemptions, tax concessions and other revenues forgone in recent times disproportionately favoured the rich and have reduced the size of the divisible pool.

My study on the convergence trajectory of per capita income (PCI) of 16 major States from 1970-71 through 2020-21, based on Economic and Political Weekly Research Foundation (EPWRF) data, shows an increasingly divergent trend, where the standard deviation value of log PCI has increased to 0.231 in 2020-2021 from 0.186 in 1991-1992, registering a compound annual growth rate (CAGR) of 0.72%. On the other hand, following United Nations Development Programme methodology, Oommen and Parma (in a forthcoming paper in the EPW) argue that the Human Development Index (HDI) across 15 States shows a convergence during the post-

reform period. The standard deviation value of HDI is reduced to 0.268 in 2018 from 0.611 in 1991. Instructively the disaggregated picture since 2005 that spans FRBM legislations shows a declining rate of convergence with a high CAGR of minus 2.85%. Indeed, equity should be the overarching concern of the 16th Finance Commission and that HDI could be considered as a strong candidate in the horizontal distribution of tax devolution. Second, there is a case for revisiting Article 246 and the Seventh Schedule for a denovo division of powers, functions and responsibilities for a variety of reasons.

First, India is no longer the one-party governance of post-Independence times. It has become a truly multi-party system. The nature of polity, society, technology, demographic structure and the development paradigm itself have significantly changed.

Second, under the changing dispensation, several pieces of central legislation such as the Mahatma Gandhi National Rural Employment Guarantee Act 2005, the Right of Children to Free and Compulsory Education Act 2009, the National Food Security Act 2013 and many others impose an extra burden on the States. The Tamil Nadu Chief Minister recently raised the issue of shifting education from the Concurrent List to the State List.

Third, at the time of constitution-making, we never asked the pertinent question of who should do what and who should tax what? We borrowed copiously from the Government of India Act 1935 and failed to apply the subsidiarity principle, viz., that whatever could be done best at a particular level should be done at that level and not at a higher level, in the division of functions and finance. Although the 73rd and 74th Constitutional Amendments provided an opportunity to re-examine the issue, nothing was done. In fact, more confusion was added with the introduction of Schedule XI and Schedule XII, which, respectively, list out the subject matter for the panchayat raj institutions and municipalities by simply lifting items from the State list and Concurrent list. They lack operational meaning unless they are broken down into activities and sub-activities, as Kerala and a few others have done. Again, the retention of the irrelevant item No. 5 in the State list is an affront on the third tier. A new local list that will map out the functional and financial responsibilities of the panchayat raj institutions and municipalities is but inevitable.

Fourth, the persistent failure to place the third tier properly on the fiscal federal map of India is a serious issue. The absence of a uniform financial reporting system (standard budgeting rules for all tiers, introduction of the accrual-based accounting system long recommended and so on) comprising all levels of government is a major deficit which the coming Union Finance Commission may be required to address. Although the Constitution refers to the third tier as ‘institutions of self-government’, policymakers, experts and even the UFCs generally refer to them as ‘local bodies’ and have not given the respect and the handholding they deserve. The failure in building the local democratic base of India, which has over 3.2 million elected representatives, and 2.5 lakh rural and urban local governments, is an enigma. is well-recognised that the prime objective of our federation with deep heterogeneity is to provide basic services of standard quality to every citizen irrespective of her choice of residence and they have a critical role to play. Will the terms of reference of the next Commission consider this?

Fifth, there is a great need to review the off-Budget borrowing practices of both the Union and the States. Off-Budget borrowings mean all borrowings not provided for in the Budget but whose repayment liabilities fall on the Budget. They are generally unscrutinised and unreported. That all income and expenditure transactions should fall under some Budget head or other is a universal principle. State public sector undertakings and special purpose vehicles raise resources from the markets, but their servicing burden often falls on the State government. In cases where the government is the ultimate guarantor, the burden of repaying the debt also falls on the State.

The central government that should set good examples is probably more guilty of off-Budget borrowing than the States. Although the States are disciplined through Article 293(3) by the Union and through the FRBM Act, the Union often escapes such controls. The liberal utilisation of the National Small Saving Fund (NSSF) for extra-budgetary financing of central public sector undertakings and central ministries by way of loans is not reflected in the Union fiscal deficits. This is because only the Consolidated Fund of India balance is considered for calculating fiscal deficit, and items in public accounts such as the NSSF are kept out. While the borrowing space of States is restricted, the Union escapes such discipline. There is also a huge area of special banking arrangements using public sector banks to facilitate cash and credit flow outside the budgetary appropriations to help various agencies involved in quasi-fiscal operations with the government. Transparency guarantees and public accountability demand that the Union, States and local governments come clean and bring all extra-budgetary transactions to the public domain.

Comment | Challenges of sub-national fiscal correction

In sum, the dynamics of the emerging fiscal federalism of India entails significant rethinking especially in the context of the 16th Finance Commission.

M.A. Oommen is Honorary Fellow, Centre for Development Studies, Thiruvananthapuram, and Distinguished Fellow, Gulati Institute of Finance and Taxation, Thiruvananthapuram

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A NUH MODEL: THE HINDU EDITORIAL ON HARYANA AND THE DETERMINATION OF THE POLITICAL EXECUTIVE

Relevant for: Indian Polity | Topic: Issues and Challenges Pertaining to the Federal Structure, Dispute Redressal Mechanisms, and the Centre-State Relations

August 30, 2023 12:20 am | Updated 12:55 am IST

The call by the Vishwa Hindu Parishad (VHP) and its affiliates to undertake a procession on August 28 in the communally volatile Nuh district in Haryana had the authorities on their toes. A similar procession on July 31 had led to clashes that claimed six lives. The administration rightly denied permission for the gathering citing the law-and-order situation and the upcoming G-20 summit in the national capital. After a face-off between the organisers and the administration, a few representatives of the Hindu outfits were allowed amid police escort to offer prayers at three local temples to mark the conclusion of a month that many faithful consider sacred. The security arrangements this time were unprecedented with a multi-layered security cordon on all roads leading to Nuh from across Haryana. Internet services and bulk SMSes in Nuh were suspended and prohibitory orders imposed in advance. All schools, colleges and banks were directed to remain shut on August 28. The police and paramilitary personnel were deployed in large numbers. The Haryana police chief held a meeting with senior police officers of neighbouring States, social media platforms were watched closely to identify possible troublemakers, and their entry to Nuh prevented. As many as 41 people were detained across Haryana.

Similar measures and earnestness on the part of administration could have prevented the situation on July 31, especially with inputs from the State CID unit on possible trouble during the religious procession. All stakeholders must learn their lessons after the tense day, which thankfully passed without a flare up. Hindus and Muslims must put the recent past behind them to restore mutual trust and harmony. And it is not just Nuh. The stakes are equally high for its rather prosperous neighbour Gurugram, an IT and automotive hub and financial capital of Haryana that abuts Delhi. The police and the administration must deal with any unscrupulous attempts to disrupt the peace of the region again with an iron hand and send across a clear signal to fringe elements that no one is above the law. The manner in which the Bharatiya Janata Party government in Haryana has handled the situation proves that communal conflicts can indeed be controlled when the political executive shows determination. Chief Minister M.L. Khattar himself made it clear through public statements and administrative action that the law will prevail. The inverse is also true — that the police and the administration are often complicit in communal violence.

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THE ELECTION COMMISSION — AUTONOMY IN THE CROSSHAIRS

Relevant for: Indian Polity | Topic: Elections, Election Commission and the Electoral Reforms in India Incl. Political Parties

August 30, 2023 12:16 am | Updated 01:43 am IST

‘The Election Commission of India has been held to be a reliable, responsible and trustworthy institution by the people of India’ | Photo Credit: K. MURALI KUMAR

Of late, the Election Commission of India (ECI) has been a focal point of differences between the government and the judiciary. This time, the clash of opinions is over its appointment.

The Supreme Court of India, in a judgment on March 2, directed that the Chief Election Commissioner (CEC) and the Election Commissioners (EC) will be appointed by the President of India based on the advice of a committee made up of the Prime Minister, the Leader of the Opposition in the Lok Sabha or the leader of the single largest Opposition party and the Chief Justice of India (CJI). This judgment of the Constitution Bench was a major step towards broadbasing the ECI and enhancing its constitutional status. Article 324 of the Constitution contains a provision for such a law to be enacted by Parliament.

The significance of this judgment also lies in the fact that this was a unanimous judgment of a five-judge Bench. So far, the top officers of the ECI have been appointed by the President of India on the advice of the central government. However, the government of the day, in an unambiguous move, introduced a Bill in the Rajya Sabha on August 10 which if passed will overturn this verdict.

The Bill seeks to replace the Chief Justice of India from the high-powered selection committee, meaning the committee will be made up of the Prime Minister (Chairperson), Leader of the Opposition in the Lok Sabha (Member) and a Union Cabinet Minister to be nominated by the Prime Minister (Member).

The government, through this Bill, has taken the Supreme Court head on, making it clear that it wants greater weightage in the appointments of the top election officials — and thus a greater hold over the institution. Experience and research show that incumbent governments, especially those with authoritarian streaks, do not usually do away with democratic institutions but, instead, relentlessly work towards making them pliant. The institutional structures remain but are drained of their substance. And, in this case, one is dealing with a matter of electoral winnability and a consolidation of state power.

The procedure of appointments of the CEC and the ECs has seen much debate in policy and political circles ever since the Constituent Assembly debates and much has been written about it.

A suggestion during the Constituent Assembly Debates was that the appointment of the CEC should be subject to confirmation by two-thirds majority in a joint session of both Houses of Parliament (Constituent Assembly debates, June 15, 1949). However, Parliament was entrusted with the charge of making appropriate laws on the matter.

The V.M. Tarkunde Committee appointed by Jayaprakash Narayan in 1975, the Dinesh Goswami Committee on electoral reforms set up by the then Prime Minister, V.P. Singh, in the 1990s, and the second Administrative Reforms Commission in its fourth report in 2009 among others made recommendations that the appointments of members of the ECI should be more broad based (through a collegium) than leaving this solely to the government on whose advice the President made these appointments.

In 2006, a suggestion was made by a former CEC, B.B. Tandon, to the former President of India, A.P.J. Abdul Kalam (when both were in office) that a seven- member committee headed by the Prime Minister should choose the CEC and the other ECs. The committee should include the Lok Sabha Speaker, the Leaders of the Opposition in the Lok Sabha and the Rajya Sabha, the Law Minister, the Deputy Chairperson of the Rajya Sabha and a judge of the Supreme Court nominated by the CJI. The Bharatiya Janata Party (BJP) had supported such a suggestion and argued for a representative collegium, which included the CJI to appoint the apex electoral officials. BJP General Secretary Arun Jaitley in a press release on the CPI(M)'s suggested electoral reforms in 2006 had said, 'Any monitoring of Election Commission by Government or their nominee will be destructive of the independence of Election Commission'.

In 2012, senior leader of the BJP and former Deputy Prime Minister L.K. Advani reiterated the argument that such a collegium should be formed with the Prime Minister as its chairman, with the CJI, the Minister of Law and Justice and the Leaders of the Opposition in the Lok Sabha and the Rajya Sabha as its members. He argued that the prevalent system, whereby members to the ECI are appointed by the President, solely on the advice of the Prime Minister, does not inspire confidence among the people.

Interestingly, all these high-level committees, experienced officers and even the BJP leadership saw the importance of this and recommended that the CJI or a judge appointed by him/her should be a part of this committee; never was a suggestion made that a Union Cabinet Minister should be bestowed with this membership (and that too by replacing the CJI). In asking for reform in the appointment, the idea was to raise the ECI a few notches higher on the free and fair bar and pave the way for expunging biases and attachments to the ruling party. The effort was to curb it from becoming a 'committed', partisan and an incumbent-friendly entity. Through the current Bill, the government, under the BJP, is attempting to push the ECI towards further governmental control strengthening the perception about a democratic weakening.

Suggestions for reforms in the appointment procedure of the ECI came from Opposition parties, wherein the BJP was one of the most vocal parties, mainly during the Congress regime. It was felt, and rightfully so, that ruling parties have a structural advantage over institutions, making them susceptible to manipulation and biases. It was felt that having a more representative selection committee would make elections fairer by reducing the hold of the incumbent party/parties on the ECI. However, during the previous National Democratic Alliance regimes, the BJP leadership did not move on its own (clearly articulated) suggestions. Through the new Bill, it has reversed its own position which it had been voluble about while in the opposition.

The ECI has been held to be a reliable, responsible and trustworthy institution by the people of India. Handling elections that involve about 900 million voters (2019 election data) through a machinery of 11 million personnel in a setting of economic hardship and inequalities is a remarkable feat. However, going soft on the ruling party or its ideology, as the perception is, whether this has to do with election schedules, electoral speeches, alleged hateful propaganda, electoral rolls or other kinds of malpractices, is eroding not only its own autonomy but also people's trust. Nevertheless, the point remains that the present regime still sees the ECI as an institution with autonomy. And this autonomy does not gel with its goals. It would instead like a firmer grip on the ECI through statutory means.

Manjari Katju teaches at the Department of Political Science, School of Social Sciences, University of Hyderabad

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