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Source : www.thehindu.com Date : 2023-11-01

# ETHICS, PARLIAMENTARY CONDUCT AND THE INDIAN MP

Relevant for: Indian Polity | Topic: Comparison of Indian Constitutional System with that of other Countries - Parliamentary & Presidential Systems of Governance



November 01, 2023 12:16 am | Updated 08:02 am IST



‘The Ethics Committee of the Lok Sabha is a relatively new committee’ | Photo Credit: Getty Images/iStockphoto

The Lok Sabha Ethics Committee’s proceedings against the All India Trinamool Congress Member of Parliament (MP) from West Bengal, Mahua Moitra, have resulted in much public debate. A senior MP from the Bharatiya Janata Party, Nishikant Dubey, lodged a complaint with the Speaker alleging that Ms. Moitra had received money from a businessman for putting questions up in Parliament with a view to promoting the person’s business interests. The Speaker in turn referred the complaint to the Ethics Committee for examination and a report.

It must be clarified at this point that if an MP takes money for putting questions up in Parliament, they will be guilty of breach of privilege and contempt of the House. Such complaints are invariably referred to the Committee of Privileges for investigation. This committee, after a proper investigation, submits its findings in a report along with the recommendation for action against the MP in question. If a case involving illegal gratification for conducting parliamentary work is proven, the MP may even be expelled from the House. There have been such instances in the Lok Sabha where MPs were expelled from the House on this ground.

In the first case, in 1951, H.G. Mudgal, an MP of the Provisional Parliament, was found guilty of promoting the interests of a business association in return for financial benefits by putting questions up, and moving amendments to a Bill which affected the interests of that business association. A special committee of the House found that his conduct was derogatory to the dignity of the House and inconsistent with the standards which Parliament is entitled to expect of its members. But he resigned before he was expelled by the House (the action recommended was his expulsion). In 2005, a sting operation by a private channel showed 10 Members of the Lok Sabha accepting money for putting questions up in Parliament. Again, a special committee was appointed which found them guilty of conduct unbecoming of a member and recommended their expulsion which was accepted by the House. All the MPs were expelled. Thus, complaints of MPs accepting money for parliamentary work are referred to the privileges committee or special committees appointed by the House for that purpose. However, Ms. Moitra’s case has been referred to the Ethics committee although the allegation is about illegal gratification for doing parliamentary work.

The Ethics Committee of the Lok Sabha is a relatively new committee which was set up in 2000, with a mandate to examine every complaint that related to the unethical conduct of MPs referred to it and to recommend action. It was also tasked with formulating a code of conduct for MPs.

An interesting aspect of this committee is that the term ‘unethical conduct’ has not been defined anywhere. It is left entirely to the committee to examine a particular act of conduct and decide whether it is unethical or not. A couple of cases decided in the past certainly point to the type of conduct which can be called unethical. In one instance, an MP took his close female companion along with him on a parliamentary tour, personating her as his wife. The committee found the MP guilty of unethical conduct and its recommendation was that he was to be suspended from 30 sittings of the House. He was also barred from taking any companion or his spouse on any official tour till the end of tenure of that Lok Sabha. Thus, the moral vagaries of MPs definitely come under scrutiny of the ethics committee.

But there are also other cases of misconduct which were either examined by the ethics committee or special committees. For example, an MP misused the car parking label issued by Parliament. The case was referred to the Ethics Committee which, after examination of the case, closed it as the MP owned up to his mistake and apologised. In another case, an MP took along a woman and a boy on a foreign tour using the passports of his wife and son. This was treated as a serious case as it involved the violation of the Passports Act. This case was referred to a special inquiry committee which held him guilty of grave misconduct as well as contempt of the committee and recommended his expulsion. It must be noted here that more serious cases involving serious misconduct are dealt with by either the Committee of Privileges or special committees, and not by the ethics committee.

In Ms. Moitra’s case, if the complaint is about her having accepted illegal gratification, then the case becomes a case of breach of privilege and cannot be dealt with by the ethics committee. Since a public servant accepting a bribe is a criminal offence, it is normally investigated by the criminal investigative agencies of the government. Parliamentary committees do not deal with criminal investigation. They decide on the basis of evidence whether the conduct of the MP is a breach of privilege or contempt of the House and punish them accordingly. But the punishment by the House relates to his functioning in the House. Otherwise, he will be liable to be punished for the criminal offence, as in the law. It may be remembered that the 10 MPs who were expelled from the Lok Sabha are still facing trial under the Prevention of Corruption Act.

A parliamentary probe is not the same as a judicial probe. A judicial body probes a matter as in the statutes and Rules, and is conducted by judicially trained persons. Parliamentary committees consist of Members of Parliament who are not experts. Since Parliament has the power to scrutinise the executive, which is accountable to it, it possesses investigative power also. It also has the power to punish those including its own members in order to protect its honour and dignity.

But the methods followed by Parliament in investigating a matter are different from those of the judiciary. Parliament does the investigative work through its committees which function under the Rules of the House. The usual methods are examination of the written documents placed before the committee by the complainant and the witnesses, oral examination of all the relevant witnesses, deposition of experts, if deemed necessary, sifting of the whole volume of evidence placed before the committee, and arriving at findings on the basis of the evidence. If the committee examines a complaint against a member of the House, he can appear before it through an advocate and also cross-examine the complainant and other witnesses on permission by the chair. Findings are arrived at after the analysis of all the evidence made available to the committee. In the ultimate analysis, the committee takes a view on the basis of common sense. The findings of the committee of Parliament can be said to be on the basis of

preponderance of probabilities. The rules of evidence under the Evidence Act are not applicable to a probe by a parliamentary committee. The question of the relevance of the evidence of a person or a document is finally decided by the Speaker only, and not according to the Evidence Act.

The issue of MPs sharing their password and login details with another person has come into focus now. In reality, MPs do not have the time to sit down and write out questions. So, they are said to be sharing the password with personal assistants, which can be called a practical necessity. Moreover, the Lok Sabha does not seem to have framed any rules to regulate the online submission of questions. Further, an MP is free to engage any person to do his parliamentary work. He also does not have any obligation to disclose the sources from where he gets information to do his parliamentary work. Article 105 of the Constitution gives them the freedom to say “anything” in the House. This right should be deemed to be extended to the tapping of any source for information for putting questions up or framing Bills or resolutions to be placed in Parliament. Therefore, an investigation into the sources of information of an MP may not have legal sanction. Otherwise, Parliament has the power to discipline its members.

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

Source : www.thehindu.com Date : 2023-11-04

# ACTION AND AUTHORITY: THE HINDU EDITORIAL ON GOVERNORS AND IMPLEMENTATION OF DECISIONS BY ELECTED REGIMES

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



November 04, 2023 12:30 am | Updated 08:00 am IST



That two States have approached the Supreme Court of India against the conduct of their Governors once again flags the problem of political appointees in Raj Bhavan using their authority to delay the implementation of decisions by elected regimes, if not undermine them. Tamil Nadu and Kerala have questioned the delay in the granting assent to Bills passed by the legislature. Tamil Nadu is also aggrieved that proposals related to grant of remission to some convicts, sanction for prosecution of some former Ministers and appointments to the State Public Service Commissions have not been acted upon. Governors need not rubber stamp any decision, but one can question the practice of Governors, especially in States not governed by the ruling party at the Centre, blocking decisions and Bills. For instance, some Governors appear to be hostile to the very idea of amendments to university laws if they seek to leave out Chancellors, invariably the Governors themselves, from the process of appointing vice-chancellors, or establishing new universities in which Governors are not chancellors. The idea of having Governors as ex-officio vice-chancellor of most universities is only a practice and is actualised through their founding statutes. However, Governors seem to be labouring under the misconception that they have a right to be chancellors and tend to delay assent to any Bill that clips or removes their power. It is time to have a national prohibition on Governors being burdened with the role of chancellor of any university, as recommended by the Justice M.M. Punchhi Commission on Centre-State relations.

It is unfortunate that absence of a time-frame for giving assent is used by some Governors to stymie laws passed by the legislature. One would have thought the Supreme Court's observations, arising out of the Telangana government's petition, reminding constitutional authorities that the phrase "as soon as possible" appearing in Article 200 of the Constitution contains significant "constitutional content" would have driven into them a sense of immediacy in considering Bills. What the Court meant was that it would be constitutionally impermissible for Governors to indefinitely hold on to Bills without conveying a decision. The States, too, ought to be prudent in their decision-making without leaving scope for questions on the merit of their decisions. The absence of any laid-down process to seek applications and assess the relative merits of applicants before appointing the chairperson and the members of the Tamil Nadu Public Service Commission is a case in point. The larger point that none should forget is that Governors are explicitly restricted in their functioning by the 'aid and advice' clause in the Constitution and ought not to misuse the discretionary space available to them.

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Source : www.thehindu.com Date : 2023-11-06

# TAKING A LEAF OUT OF NEW ZEALAND'S VOTING SYSTEM

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



November 06, 2023 01:00 am | Updated 09:44 am IST



Voters pose for a photo showing their fingers marked with indelible ink after casting their votes. File | Photo Credit: PTI

At first glance, Odisha and Auckland seem worlds apart. They differ starkly in the Human Development Index, education levels, and socio-economic indicators. However, if we scrutinise their political behaviour, similarities emerge. Both regions exemplify the concept of split voting. This offers a nuanced understanding of voter behaviour and the efficacy of electoral systems.

Odisha's unique set-up of concurrent Lok Sabha and State Assembly elections demonstrates the electorate's differentiated political choices. Odisha held simultaneous elections in 2019. Voters cast both their votes on the same day, but split their voting patterns. Considering the Lok Sabha votes, the Biju Janata Dal (BJD) led in 88 out of 146 Assembly Constituencies. However, on the same day for Assembly votes, the BJD won 113 out of 146 Assembly Constituencies. The difference amounted to 25 seats and almost a 2% vote share for the BJD.

India follows the first-past-the-post voting system, while New Zealand uses the mixed member proportional (MMP) system. Under MMP, voters cast two votes: a 'party vote' that determines the overall composition of the 120-seat Parliament and an 'electorate vote' to elect a local MP for their geographical constituency. The FPTP method decides the local MP election. There are 72 electorate seats, and parties fill the other 48 list seats. Each party submits a ranked party list to the Electoral Commission of New Zealand before the polls. Parties then elect candidates from this list as list MPs. The electorate vote does not alter the overall party representation in Parliament. Voters can split their vote. Giving both votes to one political party is a 'double tick'. Allocating votes to two different parties is a split vote.

The MMP system allows a voter to choose a candidate from a different party if they don't like the local candidate from their preferred party. This choice doesn't dilute the impact of their vote on their preferred political party's final tally in Parliament. This was evident in the 2020 Auckland Central parliamentary election. Voters chose Chlöe Swarbrick, a Green Party candidate, as their local MP; yet, the same constituency favoured the Labour Party in their party vote. Such results confirm the electorate's mindful, diverse voting patterns. As per the Electoral Commission of New Zealand, 31.86% of votes in 2020 were split votes, from 27.33% in 2017. Voters in eight out of 72 electorate seats created 'switch seats.' In a switch seat, voters pick a candidate from

one party but give their party vote to another, meaning the elected local MP comes from a party that doesn't secure the majority of party votes.

In the recent parliamentary elections, Auckland Central voters again exhibited the same split pattern. Preliminary results suggest that voters chose Ms. Swarbrick from the Green Party as their local MP but favoured the National Party in their party vote. Besides, the party vote share for the Labour Party and ACT party in the Auckland Central electorate was more than three times of their respective candidate's vote share in the same constituency. There were 13 such 'switch seats'.

The MMP system has its own share of criticism. For instance, it may prompt tactical voting, where voters might support a party that they don't necessarily endorse just to keep another party out of power. However, the benefits seem to outweigh these drawbacks. The first benefit is that the split voting system allows for more localised accountability for elected representatives. They can't just ride a party wave. The second is policy focus. As parties don't need to concentrate on individual candidate winnability, they can emphasise on policies and ideologies to garner party votes. The third is that MMP improves representation for women, indigenous communities, differently abled people, and other deprived groups. Before MMP's introduction, New Zealand had only a 21% representation of women in 1993; now, 51% of MPs are women. Maori representation has also risen. Fourth, MMP enhances democracy by letting voters express a diverse range of political preferences without wasting their votes. Every party vote gets counted to determine how many seats a party gets. Fifth, the system provides flexibility, allowing voters to select the best candidate-party combination according to their beliefs. Both party and candidate are chosen by voters in a mutually exclusive manner with no effect on each other. Sixth, after introduction of MMP, the average age of an MP in New Zealand has considerably declined. It was 47.3 years in the 2020 elections. This has been possible because of the low entry barrier for young politicians thanks to split voting choices.

In the Indian electoral framework, compulsive voting often curtails the liberty of voters to express their genuine preference. Many hesitate to vote for candidates outside their preferred party or perceived winnable contenders, fearing repercussions on the broader political canvas. A split voting system could offer a solution by allowing voters to choose candidates based on merit while ensuring that their party preference determines legislative composition. The essence of democracy lies in offering nuanced and, if need be, diverse choices. The ability to distinguish between candidate and party signifies a mature democracy. Although historically, the Indian electorate might have been wary of split voting, contemporary political behaviour, as seen in Odisha, indicates an eagerness to embrace such nuanced choices.

***Vipul Anekant is Deputy Commissioner of Police, Delhi Police***

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Source : www.thehindu.com Date : 2023-11-10

# JUSTICE, ANGER AND THE NITHARI ACQUITTALS

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



November 10, 2023 12:08 am | Updated 01:07 am IST



‘When the police are not shy about manipulating evidence, and public pressure is relentless, it comes as a small surprise when innocent and generally poor persons are paraded as the criminal concerned’ | Photo Credit: Getty Images/iStockphoto

It is true that the bones of 19 children and women were found in Nithari, Noida, in 2006. It is also true that it was decided well before the trials in any of those cases that the two men, Surendra Koli and Moninder Singh Pandher, were guilty of these crimes, with the imagery of cannibalism etched in our collective memories. However, the terms of justice seem to be severely contested in light of the acquittals for Koli and Pandher. On the one hand is the scale of the loss to families of the victims and on the other is our collective commitment to the rule of law and presumption of innocence. It is not easy to stay committed to these principles in the face of such human tragedy. Does it matter whether there was reliable evidence to convict Koli and Pandher? Or, should we demand a conviction at all costs despite what we might make of the evidence?

The saga began in December 2006 when human bones were found in the nala outside kothi number D-5 in Nithari, where Koli resided with his employer Pandher. This led to a lurid tale of rape, murder, and cannibalism that Koli confessed to to a Magistrate after spending almost 60 days in the custody of the Central Bureau of Investigation (CBI). His pleas in the confession that he had been tortured and tutored by the police were ignored by the Magistrate. The CBI registered 16 cases for 16 murders.

**Editorial | Nithari fiasco: On the case being a scathing indictment of investigators**

In the first case that was tried, the Sessions Court relied on the confession and the discovery of human remains outside D-5 to convict and sentence Koli to death in February 2009. The Allahabad High Court and the Supreme Court of India, also relying on Koli’s confession, confirmed this death sentence. The case progressed to the level of the President of India rejecting Koli’s mercy petition, only for the High Court to find that it would be constitutionally untenable to execute him. Koli remains in Dasna district prison, where he is serving a life sentence for this murder.

The remaining 12 cases also had Koli’s confession as the mainstay of the prosecution’s case. Yet, the Allahabad High Court has now acquitted Koli, despite the very same evidence having been used right up to the Supreme Court in the first case.

What changed suddenly? The High Court has highlighted that Koli's lawyers were able to get investigators to admit to legally significant flaws in these 12 cases that were not available in the first case, where Koli, an illiterate and poor man, had been reliant on a different lawyer. On the basis of these admissions, the High Court concluded that the investigation was deeply flawed, and that both the police and the CBI had failed to investigate a neighbour to D-5 — a surgeon who had been interrogated earlier for organ trafficking.

Unlike courts before it, the High Court gave due consideration to the report of a high-level committee set up by the central government to look into the Nithari murders that had recommended an inquiry into organ trafficking, given the precision with which the bodies were dismembered and the absence of torsos among the bones found. The court also noted that evidence of 'substantially better quality' had been put forth in these cases to establish that the confession had been procured through torture and tutoring. This is not Koli's first acquittal; the trial court has also acquitted him of the remaining three murders.

For many readers of this daily, all of this might seem like unnecessary legal wrangling designed to obfuscate the truth. The perceived failure of the legal system to confirm public belief about Koli's guilt seems to have unleashed immense anger and frustration. There is no willingness to pause and question the conduct of the investigation agencies in this case. Irrespective of what we might have been led to believe through media hyperbole, it is in our own collective interest to say that criminal convictions must meet a certain quality of evidence, and courts should not uncritically accept prosecution narratives. Media trials, based on evidence leaked by investigators, often sentence the accused even before their trial in a court of law begins.

When the police are not shy about manipulating evidence, and public pressure is relentless, it comes as little surprise when innocent (and generally poor) persons are paraded as the criminal concerned. Whether our appellate courts catch these wrongful convictions becomes a roll of dice, dependent on the judge's identity and their tolerance for public pressure. In stark contrast to its approach in Koli's case, the Supreme Court has recently acquitted 13 people who had been sentenced to death. The Court's dissatisfaction with police investigations has become a refrain in such cases.

The anger with and frustration over the lack of accountability for the tragedy that unfolded in Nithari are certainly legitimate. However, the pursuit of that accountability should not translate into a demand for convictions at all costs. It risks further delegitimisation of an already broken criminal justice system. It also does injustice to us all by compromising the rule of law — our only protection against the might of the state, which can choose and punish people at its whim.

***Stuti Rai is a Litigation Associate at Project 39A, National Law University Delhi. The views expressed are personal***

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Source : www.thehindu.com Date : 2023-11-11

# UNENDING ORDEAL: THE HINDU EDITORIAL ON CONTINUING ACTS OF RAGGING

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



November 11, 2023 12:10 am | Updated 09:40 am IST



Multiple pieces of legislation and regulations prohibiting ragging on campuses have failed to end the dehumanising ordeals junior students are subjected to by their sadistic seniors. Nearly three months after a 17-year-old boy died due to ragging in West Bengal's Jadavpur University, a second-year undergraduate student of the PSG College of Technology in Tamil Nadu has been left brutalised, physically and mentally, for refusing to yield to monetary extortion by his seniors. Both States were among the earliest to enact legislation banning ragging. That students undergo such traumatic experiences despite civil society being rudely awakened by spine-chilling cases of brutalisation and even the murder of victims of ragging, exposes the gaps in the system that allow a vicious cycle where victims one year become perpetrators the next. From bullying and harassing freshers to ensure subservience to seniors, acts of ragging have taken perverse and cruel forms, including through sexual abuse, intended to dehumanise victims. An act of indiscipline has evolved into one that involves elements of criminality. While unlike earlier, ragging is no longer a given on campuses, it is evident that victims are not just the freshers and the harassment extends beyond the initial months of a new academic year, as seen above.

The Supreme Court-appointed R.K. Raghavan Committee had captured the causes, and suggested actionable remedies, in its 2007 report, 'The Menace of Ragging in Educational Institutions and Measures to Curb It'. The panel rightly categorised ragging as a form of "psychopathic behaviour and a reflection of deviant personalities". In 1999, a University Grants Commission (UGC) Committee had recommended a "Prohibition, Prevention and Punishment" approach to curb ragging. Yet, as the Raghavan Committee pointed out, many State laws only seek to prohibit, and not prevent, ragging. In its words, "while prevention must lead to prohibition, the reverse need not be true." Despite 'The UGC Regulations on Curbing the Menace of Ragging in Higher Educational Institutions 2009', except for formalities such as conducting freshers' parties, mandating undertakings from students and parents against indulging in ragging, and putting up 'no-ragging' notices, the stakeholders have done little to prevent it. Institutions must create an encouraging atmosphere where teachers and hostel wardens, and not parents living in a distant place, are the first point of contact for victims. There must be greater accountability by educational institutions to prevent ragging. As the Raghavan panel recommended, regulatory authorities must ensure a ragging-free campus. This has a direct bearing on the maintenance of academic standards in individual institutions. Governments too must be earnest in implementing regulations, failing which campuses would not be safe for students.

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Source : www.thehindu.com Date : 2023-11-14

# ENHANCING REPRESENTATION, FOR A JUST ELECTORAL SYSTEM

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



November 14, 2023 01:20 am | Updated 01:20 am IST



‘Enhancing local democratic representation will help strengthen India’s democracy’ | Photo Credit: C. VENKATACHALAPATHY

An Indian Member of Parliament (MP) is said to represent 2.5 million citizens, on average. In comparison, a U.S. House of Representatives member typically represents approximately 7,00,000 citizens. Similarly, in Pakistan, a member of the National Assembly is a representative of approximately 6,00,000 citizens, while the ratio in Bangladesh is closer to approximately 5,00,000 citizens. In this year so far, India had around 4,126 Members of the Legislative Assembly, 543 Lok Sabha MPs and 245 Rajya Sabha MPs. There are far too few parliamentarians/Assembly members responsible for citizen welfare in India. Limited representation, in a democratic setup, seems to be our default preference.

While India does have innumerable grassroots politicians, 1,000-plus municipal councils/corporations with between 50 to 100 wards and approximately 2,38,000 panchayats (according to Press Information Bureau data) with between five to 30 members on average at the national/State level, there is a clear deficit in terms of their adequate representation in order to raise critical issues and enable law-making.

Meanwhile, our political system is riven with malapportionment, with legislative weight being skewed towards the citizens of select States. Unlike India, the United States has a political system that seeks to engender malapportionment, with each State given two senators in the U.S. Senate, enabling a block on legislation. Disproportionate allocation of power is encouraged. This is easier in a homogeneous country with a bi-party political system, where the same parties compete across all States. In India, with its heterogeneous political system across States, malapportionment can mean empowering select political outfits over others. With a sense of a different political culture in south and north-east India growing, one must tread carefully.

Delimitation could be a potential solution to restore proportionality — it has been utilised in the past. The Commission was set up four times in the past as an independent body, to enable redistricting. In 1976, during the Emergency, the number of Lok Sabha seats was frozen, with delimitation pushed out to 2001, citing ongoing family planning policies, with a push to avoid punishing select States with effective population control measures in place.

Delimitation may have resumed when States had reduced their fertility rates, enabling parity. In February 2002, the 84th Amendment Act of the Constitution was introduced, which froze the number of Lok Sabha seats until the first Census after 2026 (i.e., 2031). With the 2021 Census delayed (now likely to be conducted in 2024, with results potentially published by 2026), there is a window to conduct delimitation earlier. However, unleashing delimitation will have its consequences. Between 1971 and 2011, Rajasthan and Kerala, at 25 million and 21 million in population in 1971, respectively, have seen a widening to 68 million and 33 million, respectively. Similarly, in the 2019 elections, each MP from Uttar Pradesh represented approximately three million voters, while an MP from Lakshadweep represented about 55,000 voters. Assuming the number of parliamentary seats goes up to say 753 seats, States such as Tamil Nadu, Andhra Pradesh, Telangana and Kerala might see an increase in seats of about 6%, with Karnataka potentially seeing an 11% rise. Meanwhile, northern States such as Uttar Pradesh, Bihar, Madhya Pradesh, and Rajasthan would see their seats rise by 63%. Delimitation, in its historical form, would engender a bias towards a Hindi-speaking northern population while enabling select national parties to rise to power. States which have performed well in reducing their population growth, such as Tamil Nadu and Kerala, may be punished. Delimitation is inevitable, but its deleterious consequences can be minimised. First, the number of seats in Parliament needs to increase significantly (at least around 848 seats to avoid any State losing seats), helping to enhance democratic representation ratios. Delimitation should not be driven only by factors based on population. Geographical determinism, economic productivity, linguistic history, and a sense of fairness should also play a part. In simpler terms, Sikkim’s voice must also be heard in Parliament even if Bihar has a greater population. The fiscal impact of delimitation on future transfers to States will also need to be rethought.

Beyond this, our electoral system must be reformed. Federalism needs to be promoted (past decades of centralisation that have impacted Centre-State relations), and we need to give States a better voice and a platform to represent their interests.

The Rajya Sabha can play this role; however, it is currently elected by State legislatures, giving disproportionately more representation to larger/more populous States. Constitutional reform can be pursued to give each state the same number of Rajya Sabha MPs. At the same time, direct elections for Rajya Sabha MPs should be promoted while ensuring that a domicile requirement is added and stringently adhered to.

Proportional representation can also be considered, especially for the Lok Sabha and State Assembly elections. In Australia, lower-house elections have voters rank candidates on an alternative preference ballot — if a candidate does not win a majority of votes in the first round, the weakest candidate is eliminated, with their votes redistributed to the next preferred candidate. This goes on until there is a clear majority behind a candidate. In France, a double ballot system is conducted for National Assembly elections; if no candidate wins in the first round, the second round sees only candidates with over 1/8th of total votes in the prior round competing. India’s first-past-the-post system may ensure quicker election results. But still, it does ensure that a legislator often represents a constituency without a majority of votes.

We need more States as well. The largest State (highest resident population) in the United States, California, has a population of just 39 million, with the average State having a population of about five to six million. Around 22 Indian States/Union Territories have a population higher than that. The States Reorganisation Commission was set up in 1953, creating nearly 14 linguistic States and six Union Territories. There is potential for India to have more States (moving up from 29 to say 50 or even 75 States); for example, a State such as Uttar Pradesh, is simply too big to be governed well as a single unit. A concern about North Indian or large States dominating the polity would be alleviated if we had more and smaller-sized States. A New State Reorganisation Commission may be set up after the next election to evaluate the socio-

economic and administrative viability of select to-be States (for example, Bundelkhand, Gorkhaland, Jammu, Karu Nadu, Kongu Nadu, Mithila, Saurashtra, Tulu Nadu and Vidarbha). We have enough linguistic States — States must be split up/redesigned to enhance administrative efficiency and democratic accountability.

India has 8,000-plus urban settlements, but the number of mayors remains in the low hundreds. Every Census town may have a fixed-tenure mayor elected in direct elections. Direct elections could enhance democratic representation while improving efficiency in urban governance. Such mayors must also be empowered, with decision-making ability over 18 critical functions — for example, urban planning, water supply, fire, land use regulations and slum improvement), as outlined by the Constitution (74th Amendment) Act. Select States such as Bihar and Rajasthan) must be pushed to loosen their grip on city-level authorities/functions.

Enhancing local democratic representation will help strengthen India's democracy. Such measures might help alleviate the concerns of citizens in varied parts of India and to enhance its democracy. Any child from the northeast or south of India could aspire to become a Prime Minister. One hopes our policymakers have the wisdom to ensure a just electoral system.

***Feroze Varun Gandhi is a Member of Parliament, representing the Pilibhit constituency for the Bharatiya Janata Party***

Source : www.thehindu.com Date : 2023-11-17

# SHOULD ELECTIONS BE STATE FUNDED?

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



November 17, 2023 01:48 am | Updated 08:41 am IST



File photo of a shop selling flags of political parties, in Thiruvananthapuram. | Photo Credit: The Hindu

A Constitution Bench headed by the Chief Justice of India, D.Y. Chandrachud, recently reserved its judgment on petitions challenging the validity of the electoral bonds scheme. The proceedings focused on arguments pertaining to the voters' right to information vis-a-vis the right to confidentiality of donors. Transparency in election funding has become the central issue here. Should elections be state funded instead? **Jagdeep Chhokar** and **Sanjay Kumar** discuss the question in a conversation moderated by **Sreeparna Chakrabarty**. Edited excerpts:

Can state funding of elections bring in transparency in the poll process?

**Jagdeep Chhokar:** First, calling it state funding of elections is a misnomer. It should be called public funding of elections. I say this because in India, we unfortunately have a notion that whatever the state does is free. If there is such funding, it will be public money that the state will be giving for elections. So, if we call it public funding of elections, my sense is that people will feel that it is their money, which is the truth.

Also read | **Challenging the Electoral Bond Scheme**

Public funding of elections can certainly bring transparency in the poll process, but it depends on how it is done. If public money is given to political parties and candidates, and let's say they are also welcome to get money from wherever they like, then there are serious issues. Public funding in principle is a good idea, but the mechanics of it need to be fleshed out.

**Sanjay Kumar:** I think it would be a welcome step, but I'm not sure whether it will bring about transparency in the electoral process because we need to look at the nitty-gritty of how this is going to be worked out, we need to look at what state funding means.

Also read | **Election Commission not in favour of State funding of elections: Anurag Thakur**

It would certainly be better than the existing system where candidates and political parties spend from their own pocket and a lot of black money goes into election campaigning. State funding of elections will help bring some transparency. But I'm not sure whether the entire electoral

process will become transparent with state funding of elections alone.

Four reports have looked into the viability of state funding of elections. The Indrajit Gupta Committee Report, the Law Commission of India Report of 1999, the Report of the Second Administrative Reforms Commission in 2008, and the National Commission to review the working of the Constitution Report of 2001. The first three said that state funding is desirable to an extent. Is it viable for the Indian economy?

**Jagdeep Chhokar:** We can discuss viability provided we agree that public funding is desirable, which I think it is. You mentioned four reports. If you read the Indrajit Gupta Committee Report, which is most often quoted in support of public funding of elections, it says state funding should be done only in kind and not in cash. It also says that state funding of elections would be a waste of public resources unless it is accompanied by factors such as democratisation of political parties and decriminalisation of the political process. It says unless there is internal democracy in political parties, state funding of elections will be a waste of public money. So, it lays down conditions under which public funding of elections can be, and should be, considered, and not necessarily adopted. State funding is viable only if parties are internally and demonstrably democratic in their functioning, transparent in their financial affairs, and there is a reliable mechanism of ensuring that parties and candidates do not accept money from other sources.

Also read | **Opaque political financing could cost democracy dear**

Now, if there is public funding of elections, how much provision should we make for that? If an amount is to be set aside for public funding of elections, we need to know how much money was spent in the last election. That number depends on a couple of factors. First, the money that the Election Commission of India spent. This data is available and reasonably accurate. Second, the amount spent by political parties and candidates. This figure is known only to political parties and candidates who contest elections.

Professor Kumar, the Indrajit Gupta Committee had said that whatever funding is given should be in kind, such as free transport. How would this work? And is it possible to explore a system which is partially public funded?

**Sanjay Kumar:** People need to discuss this because the question is about a possibility. Is this possible or not? I think it is possible. You have to work out a model. We cannot say this is not possible at all or that this is perfectly alright. Political parties need to be part of the decision-making process.

A few years ago, Prime Minister Narendra Modi had called for a discussion on public funding of elections. Before that, the Congress had also raised it. But nothing has come out of these statements. Why have parties never taken this issue forward?

**Sanjay Kumar:** Political parties support it because state funding of elections is seen as socially desirable or desirable in the electoral context. But they have not been able to move ahead with this because at the moment, this is just a concept. Nobody is clear about how it is to be worked out.

Also, is it a case that except the two large national parties, most political parties, especially regional parties, have now become family-oriented?

**Sanjay Kumar:** How does that relate to state funding of elections? Suppose the government decides to give 100 crore to political parties for poll contests. How will this amount be

distributed? The benchmark should be the party's performance in the last Lok Sabha or Assembly elections, not whether the party is being headed by a family member or not.

Also read | **A vote for state funding**

**Jagdeep Chhokar:** I am amused that Professor Kumar is saying or at least implying that the party which gets more votes should get more money. That if Party A won or got more votes in the last election, it should get more money for this election. If that party then has more money than the parties that have lost, it will be an uneven playing field.

**Sanjay Kumar:** I was only stating a limited point that if the funding is to be supported by the government, the criteria cannot be whether a party is being headed by a family or a party which has a democratically elected leader. There have to be different criteria, and I was just citing an example. I'm not saying that the party which has performed better should get more money or a party which has performed poorly should get less. Things can be worked out. This could be one possibility. But my intervention was to another point: if a party has a leader who is democratically elected, we can't say there should be different criteria for giving funds to that party while parties which are family parties should be punished with less funds.

**Jagdeep Chhokar:** It is problematic to say that the money to be given to political parties depends on their electoral performance. No party today functions as a political party. Political parties function as corporates. Their business is to win elections and make money to be able to win the next elections. So, this functioning of political parties as corporate entities or as family-run corporate entities is the fundamental problem. Political parties have to be made accountable to the public. They have to be democratic institutions if they are to deserve public money.

How do other democracies handle this?

**Sanjay Kumar:** There are some 34 countries where state funding of elections is available in some form or the other. The highest proportion of state funding of elections is in Norway, which is about 74% of the total expenses on the election. But there are different models. In some countries only parties get the fund, candidates do not. There are countries where it's the other way round.

**Jagdeep Chhokar:** In most countries where there is public funding of elections, there are also strict transparency requirements. In the U.S., there is a rule that if the presidential candidate raises X amount of money, they are eligible to receive an equal amount of money from the government. But this is subject to certain conditions. In the last two or three presidential elections, no candidate has accepted government money. They have said that they do not want to accept these conditions and that they are able to raise enough money on our own. The point is, if there is to be any public funding of elections, I, as a member of the public, would insist on complete transparency about the money spent by the party or the candidate in the election. If a candidate or a party is allowed to accept other money in addition to public money, there is a very serious problem. And that is the reason why no political party has taken it forward.

***Jagdeep Chhokar is co-founder and trustee, Association for Democratic Reforms; Sanjay Kumar is Professor, Centre for Study of Developing Societies, Delhi***



election / political campaigns

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Source : www.thehindu.com Date : 2023-11-20

# CONSTITUTIONAL TYRANNY: THE HINDU EDITORIAL ON RAJ BHAVAN'S USE OF THE VETO

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



November 20, 2023 12:30 am | Updated 12:30 am IST



Tamil Nadu Governor R.N. Ravi's act of withholding assent to Bills concerning universities in the State is nothing but constitutional tyranny. It is gross abuse of the power granted by the Constitution to give or refuse assent to Bills passed by the legislature. The grant of assent is a routine function of the titular head of state, and the exceptional power to withhold it is not meant to be exercised unreasonably. Rather, incumbents in Raj Bhavan ought to use this veto rarely, and only in flagrant instances when basic constitutional values are at stake. The Bills for which Mr. Ravi has refused approval, seek mainly to take away the Governor's power to appoint Vice-Chancellors of universities and vest it in the State government. There is nothing in these Bills for the Governor to disapprove of, save a vested interest to retain the powers conferred on him in his capacity as Chancellor. The rejection of the Bills appears to be a cantankerous response after the Supreme Court made well-justified remarks on Governors delaying assent to Bills pending with them. On its part, the DMK government quickly convened a special session of the Assembly and adopted the same Bills again. The question arises whether it was under the belief that the Governor is bound to grant assent, if the same Bills were reconsidered and passed again by the House.

The statute position is that these Bills have failed to become law. There is no remedy in the Constitution for a House aggrieved by the rejection of its Bills. The proviso to Article 200, which makes the Governor's assent mandatory for Bills passed a second time, does not apply to Bills for which assent has been 'withheld', a term that essentially means 'rejected'. If the government was aware of this position and still ventured to adopt them again, it is possibly meant as a political message that it will not yield in the matter of pursuing its legislative measures. The effect of their fresh passage is that the Governor may treat them as fresh Bills. This means he is free to withhold assent yet again. In a sense, the Governor's action has helped highlight an undemocratic and anti-federal feature in the Constitution that creates an unguided power to reject pieces of legislation passed by elected representatives. In its observations in ongoing proceedings concerning the Governor's powers, the Court has drawn attention to the fact that Governors are not elected. The Court must examine whether vesting that office with a veto over legislation violates parliamentary democracy, a basic feature of the Constitution. An authoritative pronouncement is needed to end the scope for partisan mischief.

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Tamil Nadu / Governor / constitution / laws / government / Dravida Munnetra Kazhagam / university / democracy

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Source : www.thehindu.com Date : 2023-11-21

# A FACT CHECK UNIT THAT IS UNCONSTITUTIONAL

Relevant for: Indian Polity | Topic: Indian Constitution - Features & Significant Provisions related to The Preamble, Union & its Territories and The Citizenship



November 21, 2023 12:45 am | Updated 12:45 am IST



‘There is no doubt that it creates a chilling effect on the freedom of speech and expression’ | Photo Credit: Getty Images

The Government of Tamil Nadu issued an order recently to set up a Fact Check Unit with the intent of checking across all media platforms the authenticity of information related to the Government of Tamil Nadu. This government order (GO) is violative of several fundamental rights guaranteed by the Constitution of India, and is unconstitutionally vague and arbitrary.

Earlier this year, the Government of India had amended the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, to set up a fact check unit in order to identify “fake, false or misleading” information in respect of “any business of the Central Government”. These rules were challenged before the Bombay High Court, and the judgment is expected to be delivered on December 1. The Government of India gave an undertaking to the High Court that the fact check unit will not be notified until the judgment. Even though the GO has a passing reference to these provisions of the IT Rules, it does not disclose the undertaking given by the Government of India to the Bombay High Court.

The operative part of the GO issued by the Government of Tamil Nadu says that the fact check unit will check the veracity of information related to the announcements, policies, schemes, guidelines and initiatives of the Government of Tamil Nadu. Annexure III to the GO has more details on the unit’s functioning.

The fact check unit has been given powers to take suo motu cognisance of social media posts/articles that require fact checking. Needless to say, it can also act on complaints received by them from anyone. Identified complaints are then researched using various fact checking tools and verified through government sources such as websites, press releases, and government social media accounts. The information will then be split into actionable and non-actionable pools. Complaints under the first category will then be forwarded to the authorities concerned to initiate legal action. Further, after verifying the authenticity of the information from the authorised source of the government, the fact check unit will disseminate creative contents through its social media platforms to create awareness.

This part of the GO violates several settled principles of law. There is no doubt that it creates a chilling effect on the freedom of speech and expression, a fundamental right guaranteed under Article 19(1)(a) of the Constitution. This can only be reasonably restricted under Article 19(2) in

the interest of the sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. More importantly, such restriction under Article 19(2) can only be by way of a “law”, which, as held by the Supreme Court of India, must be legislation passed by the State. Thus, it is settled law that a GO cannot impose restrictions on the freedom of speech and expression. It is also pertinent to note that “public interest” is not a ground under Article 19(2) to restrict the freedom of speech and expression.

The fact check unit has been tasked with checking the authenticity of any information related to the Government of Tamil Nadu. Now, the phrase “information related to the Government of Tamil Nadu” has not been defined in the GO, thereby making it unconstitutionally vague and arbitrary. Would an opinion authored by an economist criticising economic/social policies of the government or an investigative article by a journalist fall under the lens of the fact check unit? This ambiguity will have a chilling effect on the freedom of speech and expression of Indian citizens. This will effectively choke the flow of information to the public, which goes against the principles of participative democracy.

The GO is riddled with other illegalities. The scheme of the GO does not provide for an opportunity of hearing to the author of the post, who can be a journalist, researcher, comedian, satirist, or members of the opposition political party. Thus, the government has become the judge, jury, and executioner on the authenticity of any information related to the Government of Tamil Nadu.

The introductory paragraph of the GO states that the emergence of social media and its related issues of mis/disinformation, fake news, and hate speech have necessitated the creation of the fact check unit by the State government. This is only partly true because hate speech has no direct nexus with information related to the Government of Tamil Nadu, which is the focus of the fact check unit. Indeed, mis/disinformation and fake news are a challenge for democracies throughout the world. This was most evident during the U.S. presidential election of 2016, the Brexit referendum and the Colombian referendum of 2016. The situation is no different in India wherein politicians and TV anchors peddle mis/disinformation with no remorse.

However, the GO issued by the Government of Tamil Nadu is not a solution to curb mis/disinformation and fake news. Consultations need to be held with all stakeholders including the public and intermediaries such as Facebook, X, and Google. For instance, in Europe, the European Commission issued the Code of Practice on Disinformation on September 26, 2018, after a broad consultative process and opinion poll covering all member States. These measures include support for an independent network of fact-checkers and promoting media literacy. There is no magic wand here, but a state-run fact check unit will only cause more harm to society.

***Rahul Unnikrishnan is Advocate, Madras High Court***

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Source : www.thehindu.com Date : 2023-11-23

# SAME-SEX COUPLES: A JUDGE TO THE RESCUE

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



November 23, 2023 01:47 am | Updated 01:47 am IST



Madras High Court judge Justice Anand Venkatesh. Photo: Special Arrangement

Justice Anand Venkatesh of the Madras High Court has innovated yet again. On November 17, 2023, in *Sushma vs Commissioner of Police*, he tasked the State government with working out a "Deed of Familial Association" which would provide legal status to relationships between same-sex couples and other LGBTQIA+ couples. This order is truly trendsetting in the light of the recent Supreme Court decision in *Supriyo vs Union of India* wherein the Supreme Court refused to recognise the right to marry, or even the right to civil unions, of same-sex couples.

While the SC Bench in *Supriyo* was unanimous, sadly, in holding that there was no fundamental right to marry, there was a difference in the majority and minority opinions when it came to the question of civil unions. While all the judges paid eloquent lip service to the rights of queer couples to form relationships, to cohabit and to enjoy intimacy under Article 21 of the Constitution, the action was a rather different story. The minority endorsed recognition of a bouquet of entitlements but failed to carry the matter further by spelling out rights and giving focused directions. The majority wiped out even this timid advance and went into wholesale retreat by abandoning the field and leaving same-sex couples to the mercy of the government and the legislature, whose policy on this matter is clear. The State should not interfere, the State should protect them from violence (should it not for everyone?) but the State need not give them legal status from which rights and entitlements would follow. How an avowedly, and loudly, liberal and progressive Court can become so retrograde is a question rich for enquiry.

Against the backdrop of gloom and despondency, Justice Venkatesh shines not just a candle but a strong beacon lamp. What he has done is nothing short of genius. In law school, we were taught the doctrines of Maine and Graveson that the law moved from status to contract, thence to statute. Since the SC has declared that statute, i.e. the Constitution and marriage laws, cannot be invoked, this Judge has adroitly shifted from the forward line to the midfield and taken possession of the ball of contract. With this, he has fashioned the concept of a Deed (basically agreement) of Familial Association. Into this Deed, he conceptualises the inclusion of rights and protections for them against harassment and violence, and discrimination in matters of employment, housing and assimilation in society. The State government is directed to put this into effect. The analogy of a football game is that while star-studded forwards bungle five easy goals, a determined half-back boots the ball from 50 yards out into the corner of the goalkeeper's net.

Civil unions have been recognised in a few countries across all continents. Primarily created to provide recognition to same-sex couples, they refer to a legal arrangement wherein the benefits and entitlements arising from the relationship are extended to couples. This provides legal and social validity to queer couples who can now proclaim and celebrate their relationship in the face of an intolerant society and thus protect them from interference either from the State or others in society. It also stands as documentary “proof” of their relationship which would help couples in obtaining various benefits and entitlements that would previously be impossible.

A simple example would be getting a dependent visa.

This would not amount to creating a new legal institution of marriage, but a procedure to register such a contract would mean that “the State will be able to give its stamp of approval to persons, who are in a relationship in the community and to a great extent, this will enhance the status of such persons in the Society”. They will “… have protection to live in society without being disturbed or harassed”. Bravo!

So, what should the Tamil Nadu Government do now? At a minimum, establish the framework to recognise such relationships through registrations of such Deeds. However, much more is possible. The State government could enact legislation creating the institution of Civil Unions and accord such status to same-sex couples; the Supreme Court’s rationale is that this is the business of the legislature. Even more laws relating to marriage, divorce, inheritance, succession, minors, adoption etc., are all present in the Concurrent List under the Seventh Schedule to the Constitution, thereby giving powers to the State to legislate on the same. The Constitution provides the means to handle differences in legislation between State and Central legislatures, but peculiar to Tamil Nadu is another constitutional hazard in the person of its Governor, R.N. Ravi, who imagines that his antiquarian office calls the shots in a democratic Republic; hopefully, he will be straightened out by the Supreme Court soon.

Tamil Nadu has long been known for being progressive. The State can add another feather to its cap and shine as a trendsetter that respects and recognises the inherent principles of self-respect, equality and social justice. Considering that these are the planks on which the politics of the State runs, it should not be too difficult to do so.

What is remarkable about this order is that it is issued in the wake of a disastrous Supreme Court judgement which cribbed, crabbed, confined and worse, decimated hopes of equality and equal treatment before law that members of the LGBTQIA community may have harboured. With one stroke, this High Court Judge has created hope. He has worked change into the interstices of law (remember Oliver Wendell Holmes Jr. famously said “legal progress is often secreted in the interstices of legal procedure”) and expertly worked his way to arrive at a principled legal conclusion as well as a perfectly enforceable order. He deserves congratulations. This also brings hope. In this country’s troubled judicial history, it is frequently the High Courts that have come to the rescue. Remember, they did so brilliantly during the Emergency but were spectacularly upended by some famous names in the Supreme Court. It is heartwarming to see that our High Court judges continue to meet the challenge.

***Sriram Panchu is a senior advocate; Vikas Muralidharan is a lecturer at Sai University***

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Source : www.thehindu.com Date : 2023-11-23

# UNHEEDED ADVICE: THE HINDU EDITORIAL ON THE CONDUCT OF GOVERNORS

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



November 23, 2023 12:15 am | Updated 12:15 am IST



Ongoing proceedings before the Supreme Court raise concerns about the conduct of some Governors. The key issue that has forced State governments to approach the court for redress is the perverse manner in which incumbents in Raj Bhavan have used the absence of a time-frame for granting assent to Bills to harass and frustrate elected regimes. When the court raised the question, “What was the Governor doing for three years?” with respect to the Tamil Nadu Governor, R.N. Ravi, it was underscoring the fact that he disposed of pending Bills only after the court’s observations about the delay in an earlier hearing. The Governor’s reluctance to act until an aggrieved government approached the court seems deliberate. The hearing was marked by some questions and answers about the implications of the Governor’s action in withholding his assent to 10 Bills, and the response of the State Assembly in passing the Bills for a second time. Preliminary observations by the court suggest that the scheme of Article 200 of the Constitution, which deals with the presentation of Bills passed by the legislature to the Governor for assent, will come under a good deal of scrutiny in this matter. With the court noting that the Governor cannot refuse assent to the re-enacted Bills, the present legislative impasse can be given a quick resolution if Mr. Ravi acts on the observation. However, the matter should not end there.

The larger issue requires a clear enunciation of the law. The tenor of Constituent Assembly debates indicates that it intended to make the power of granting or withholding assent to Bills, or even returning them for reconsideration, exercisable solely on the advice of the Council of Ministers. However, in practice, many Governors have acted on their own, especially in reserving Bills for the President’s consideration. The Supreme Court must now come up with an authoritative decision so that uncooperative Governors do not use such grey areas to their advantage. It must also be clarified whether ‘withholding assent’ is a final act of rejection of a Bill or it needs a follow-up action in the form of returning the Bill with a message for reconsideration by the House, as stated in the first proviso to Article 200. The proviso bars Governors from withholding assent to any Bill they had returned for reconsideration and has been adopted again by the legislature. The issue has also highlighted constitutional ambiguities on the role of Governors. The ‘aid and advice’ clause that is at the core of parliamentary democracy is somewhat undermined by clauses that allow Governors to give themselves discretion they were never meant to have. Such provisions need wholesome reconsideration.

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state politics / Governor

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Source : www.thehindu.com Date : 2023-11-25

# NO VOTE FOR VETO: THE HINDU EDITORIAL ON GOVERNORS AND THEIR POWERS

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



November 25, 2023 12:15 am | Updated 12:15 am IST



In a parliamentary democracy, Governors do not have a unilateral veto over Bills passed by the legislature. This is the crux of the Supreme Court's ruling in a case arising from Punjab after Governor Banwarilal Purohit withheld assent to some Bills passed by the State Assembly on the pretext that these were adopted in an illegal session of the House. The Court's reading of the scheme of Article 200, which deals with grant of assent to Bills, is in line with the core tenet of parliamentary democracy: that an elected regime responsible to the legislature runs the State's affairs. While granting assent is a routine function, the other options — withholding assent or reserving a Bill for the President's consideration — have been subjects of controversy. There is a proviso to the Article which states that "as soon as possible", the Governor may return the Bill (if it is not a Money Bill) to the House for reconsideration, but when the Bill is passed again, with or without changes, he cannot withhold assent. The Supreme Court has now read the power to withhold assent and the proviso in conjuction, holding that whenever the Governor withholds assent, he has to send the Bill back to the legislature for reconsideration. This effectively means that the Governor either grants assents in the first instance or will be compelled to do so after the Bill's second passage.

The Court has done well to point out that Governors, in a system that requires them to function mainly on the aid and advice of the Council of Ministers, cannot withhold action on Bills and must act as soon as possible. This is a clear reprimand administered to Governors who believe they can endlessly delay action on Cabinet or legislative proposals because of the absence of a prescribed time-frame. Mr. Purohit's stand that the particular session of the Assembly was illegal — because an adjourned House was reconvened by the Speaker on his own — has been rejected. The Court has ruled that the earlier session had only been adjourned and not prorogued. The verdict should not give any further scope for controversy over the role played by Governors in the law-making process that culminates with their granting assent to Bills, and must end the tussle between elected regimes and the Centre's appointees. There is still some residual scope for controversy if, as a result of Governors being divested of the power to reject Bills unilaterally, they start referring Bills they disapprove of to the President. Such an eventuality should not be allowed to arise.

Governor

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Source : www.thehindu.com Date : 2023-11-28

# IT’S TIME TO REVAMP THE STRUCTURE OF THE SUPREME COURT

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



November 28, 2023 01:15 am | Updated 08:47 am IST



Supreme Court of India. File | Photo Credit: Shiv Kumar Pushpakar

The Supreme Court of India has three jurisdictions under the Constitution: original, appellate, and advisory. The Supreme Court serves as a Constitutional Court as well as a Court of Appeal. The Court sits in benches of varying sizes, as determined by the Registry on the directions of the Chief Justice of India (CJI), who is the Master of the Roster.

Constitution Benches of the Supreme Court typically comprise five, seven, or nine judges who deliberate on a specific issue related to constitutional law. Article 145(3) of the Constitution provides for the setting up of a Constitution Bench. It says a minimum of five judges need to sit for deciding a case involving a “substantial question of law as to the interpretation of the Constitution”, or for hearing any reference under Article 143, which deals with the power of the President to consult the Court.

Typically, cases before the Supreme Court are heard by Division Benches (of two judges) or full Benches (three judges) to examine a wide range of topics, such as film prohibitions/restrictions or charges that a police commissioner abused his position. Under its very broad jurisdiction, the Supreme Court has entertained frivolous public interest litigations, such as demands that passages be deleted from the Quran or secularism be removed from the Preamble to the Constitution.

This is why, at present, there are 79,813 cases pending before the 34 judges of the Supreme Court. It is therefore understandable that there has been demand time and again for a structural change in the top court. Recently, CJI D.Y. Chandrachud announced his intent to create Constitution Benches of varied strengths as a permanent feature of the Court.

In March 1984, the Tenth Law Commission of India proposed that the Supreme Court be split into two divisions: the Constitutional Division and the Legal Division. The proposal stated that only issues pertaining to constitutional law would be brought to the proposed Constitutional Division.

Reiterating this, the Eleventh Law Commission stated in 1988 that dividing the Supreme Court into parts would make justice more widely available and would significantly decrease the fees

that litigants have to pay. It was reported that appeals in the top court mostly comprised matters from High Courts that are closer to the Supreme Court. That is, appeals from the Punjab and Haryana High Court, Allahabad High Court, and Delhi High Court formed the major chunk of matters, whereas courts far away from the apex court had fewer appeals filed, due to both difficulties in accessibility and costs.

Earlier, in *Bihar Legal Support Society v. Chief Justice of India* (1986), the Supreme Court stated that it was “desirable” to establish a National Court of Appeal that would be able to entertain special leave petitions. This would allow the Supreme Court to only entertain constitutional and public law-related questions.

As a step towards making the Court more accessible, the 229th Law Commission Report (2009) recommended four regional benches to be located in Delhi, Chennai or Hyderabad, Kolkata, and Mumbai to hear non-constitutional issues. It recommended six judges from each region at four regional benches take up appellate responsibility, with a Constitution Bench in New Delhi working on a regular basis. By dividing the heavy backlog of non-constitutional cases among regional benches, the Supreme Court, it said, could “deal with constitutional issues and other cases of national importance on a day-to-day basis.”

During colonial times, there were three Supreme Courts: in Bombay, Calcutta, and Madras. The Indian High Courts Act of 1861 replaced the Supreme Courts with High Courts for separate regions. The Government of India Act, 1935, created the Federal Court of India as an appellate body for the Privy Council and High Courts. India approved the Constitution in 1949. The Supreme Court, as we know it now, was founded on January 28, 1950, under Article 124 of the Constitution, two days after India became an independent, democratic republic. It came into being in Delhi as a result of Article 130.

The first Supreme Court included eight judges, including the CJI. As the workload rose year after year and arrears of cases began to accumulate, Parliament increased the number of judges from eight in 1950 to 11 in 1956, 14 in 1960, 18 in 1978, 26 in 1986, 31 in 2009 and 34 in 2019.

Today’s Supreme Court issues around 8-10 decisions each year through Constitution Benches of five or more judges. It serves primarily as an appeals court. Only four of the 1,263 decisions issued in 2022 were issued by a Constitution Bench. The Supreme Court hears matters between the Centre and the States, as well as between two or more States; rules on civil and criminal appeals; and provides legal and factual advice to the President. Any person can immediately petition the Supreme Court if they consider their basic rights have been infringed.

The work of the Supreme Court could be split so that there is a Final Court of Appeal and a permanent Constitution Bench. This would ensure greater judicial stability and consistency by explicitly distinguishing cases filed under constitutional authority from those filed under appellate and review jurisdiction.

A Constitution Bench (*V. Vasanthkumar v. H.C. Bhatia*) is analysing these issues and contemplating measures to protect a citizen’s basic right to access the Supreme Court. Under the guidance of the CJI, there is an opportunity to address this structural gap in the Supreme Court by designating several of the court’s appeal benches as regional benches.

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Source : www.thehindu.com Date : 2023-11-29

# A NON-STARTER: THE HINDU EDITORIAL ON PRESIDENT DROUPADI MURMU'S SUGGESTION FOR AN ALL-INDIA JUDICIAL SERVICE

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



November 29, 2023 12:15 am | Updated 02:53 am IST



Good intentions do not always make for sound policy. President Droupadi Murmu's suggestion that the creation of an All-India Judicial Service (AIJS) will help diversify the judiciary by allowing bright youngsters from varied backgrounds to become judges through a merit-based process revives the debate on whether a national system of recruitment at the district judge level is desirable. The idea has been mooted and discussed in the past, and has been part of discussions on official policy in the Union government for years. However, as the Union Law Minister disclosed last year in the Rajya Sabha, there is no consensus on the proposal. Only two High Courts agreed to the idea, while 13 were against it. The AIJS may not be the panacea it appears to be. The current system of recruitment of district judges through the respective High Courts and other subordinate judicial officers through public service commissions is more conducive to ensuring diversity, as there is scope for both reservation and a clear understanding of local practices and conditions. Unlike the civil service, judges are not assisted by an experienced lower bureaucracy in decision-making, and they require to be well-versed in the issues involved for judicial functioning.

Article 312 of the Constitution, as amended by the 42nd Amendment, provides for the creation of an AIJS, and requires a resolution adopted by the Council of States with two-thirds majority, and a parliamentary law. This Constitution recognises that rules governing the subordinate judiciary in the States will have to be superseded by a central law for this proposal to achieve fruition. It is unlikely that all States will agree to one more subject from their domain being consumed by centralisation. On the face of it, it may appear that a national service for judges not inferior to the post of district judges, with a superannuation age of 60, will be an attractive proposition for young lawyers to apply for it. However, it cannot be forgotten that legal education lacks country-wide uniformity. After enrolling, lawyers typically consider judicial service based on practical experience rather than academic brilliance. Toppers, especially from the few elite law schools, are unlikely to sit for a national judicial service recruitment examination. In comparison, options such as litigation, joining law firms and going into the corporate sector will appear more beneficial. Further, given that the number of district judges elevated to the High Courts is much lower than those from the Bar, the lack of certainty on career progression may also render a national judicial service unattractive.

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