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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

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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 : 2023-11-21

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 : 2023-11-28

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.

Kumar Kartikeya is a legal researcher based in Delhi

judiciary (system of justice) / court administration

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