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ALTERING STATUS QUO: THE HINDU EDITORIAL ON JAMMU AND KASHMIR AND STATEHOOD

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The Centre's stand that it is unable to commit itself to a timeline for restoration of Statehood for Jammu and Kashmir (J&K) is quite disappointing. Four years after the State's status was downgraded to that of a Union Territory, all that the Union government can say about it now is that the status as a Union Territory is temporary and that it is taking steps towards making J&K a complete State. When queried by the Supreme Court Bench, which is hearing the challenge to the abrogation of J&K's special status under Article 370 of the Constitution, about a timeline for the return of Statehood, the Solicitor-General said he was unable to give an exact time period. It is true that the State had faced disturbances for decades, but whether it can still be cited as the reason for the delay in restoration of statehood is a relevant question to raise. Alongside the President's declaration of Article 370 as inoperative and the application of the whole of the Constitution to J&K, the State was reorganised into two Union Territories — Jammu and Kashmir, with a Legislative Assembly, and Ladakh, without an Assembly. The Centre favours holding of panchayat and municipal elections as well as polls to the Assembly. The Election Commission of India and the State's Election Commission will have to take a call soon, as even the work of updating the electoral rolls is said to be nearing completion.

Given the government's claim that the situation is quite normal and that terrorism, infiltration and incidents of stone-throwing have all substantially come down, it is difficult to account for any further delay in the holding of elections. However, the picture of normality portrayed by the government should not, and is unlikely to, influence the adjudication of the constitutional issues arising from the manner in which the abrogation of special status was achieved. As the Chief Justice of India, Justice D.Y. Chandrachud, observed during the proceedings, the development work the government says it has undertaken after August 2019 is not relevant to the constitutional challenge. Any positive change brought about by the administration in the ground situation should be a pointer to the need for early elections and the restoration of popular government as well as Statehood, and should not be used to demonstrate the correctness of the government's actions in 2019. To be fair, the hearing before a Constitution Bench, which has gone on for 14 days so far, has been quite rigorous in its focus on the constitutional and historical issues that will ultimately determine the validity of the manner in which the State's status was altered and its territory reorganised.

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COURT'S ORDER AND THE ASI SURVEY ARE FLAWED

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

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The Gyanvapi Mosque, in Varanasi | Photo Credit: PTI

In its judgment dated November 9, 2019, a Constitution Bench of the Supreme Court of India, comprising the Chief Justice of India (CJI), Ranjan Gogoi, and Justices S.A. Bobde, Dr. D.Y Chandrachud (as he was then), Ashok Bhushan, and S. Abdul Nazeer interpreted the Places of Worship (Special Provisions) Act, 1991 in the case of M Siddiq (Dead) Through Legal Representatives vs Mahant Suresh Das and Ors. (Ram Janmabhoomi temple case).

The Court gave a binding declaration of the law interpreting the Act, which, under the constitutional scheme, becomes the law of the land and binds all courts within the territory of India under Article 141 of the Constitution of India. Its decisions must be followed by all courts (even the top court) in subsequent cases following the Doctrines of "Precedent" and stare decisis. The rationale is that the law by which the citizens are governed should be fixed, definite, and known.

The Preamble to the Act states: "An Act to prohibit conversion of any place of worship and to provide for the maintenance of the religious character of any place of worship as it existed on the 15th day of August 1947, and for matters connected therewith or incidental thereto." The five judges who authored the judgment collectively in the Ram Janmabhoomi temple case defined the Act thus: "The law has been enacted to fulfil two purposes. First, it prohibits the conversion of any place of worship. In doing so, it speaks to the future by mandating that the character of a place of public worship shall not be altered. Second, the law seeks to impose a positive obligation to maintain the religious character of every place of worship as it existed on 15 August 1947 when India achieved independence from colonial rule."

Editorial |Incremental injustice: On the Gyanvapi mosque survey

"Place of worship" includes temple, mosque, gurudwara, church, monastery or any other place of public religious worship of any religious denomination or any section thereof, by whatever name called. The definition in the Act states "Conversion with its grammatical variations, includes alteration or change of whatever nature."

The Court further holds that "Section 3 enacts a bar on the conversion of a place of worship of any religious denomination or a section of it into a place of worship of a different religious denomination or of a different segment of the same religious denomination" and that "Section 4

preserves the religious character of the place of worship as it existed on 15 August 1947". The Court held that only a place of worship, "Commonly known as Ram Janam Bhumi-Babri Masjid" stood exempted. The Justices declared, "The law imposes two unwavering and mandatory norms: A bar is imposed by Section 3 on the conversion of a place of worship of any religious denomination or a section of a denomination into a place of worship either of a different section of the same religious denomination or of a distinct religious denomination. The expression 'place of worship' is defined in the broadest possible terms to cover places of public religious worship of all religions and denominations".

After noticing the intention of Parliament, the Justices emphasised that "The Places of Worship Act which was enacted in 1991 by Parliament protects and secures the fundamental values of the Constitution". They held that "In providing a guarantee for the preservation of the religious character of places of public worship as they existed on 15 August 1947 and against the conversion of places of public worship, Parliament determined that independence from colonial rule furnishes a constitutional basis for healing the injustices of the past by providing the confidence to every religious community that their places of worship will be preserved and that their character will not be altered".

The Justices added, "The law speaks to our history and to the future of the nation. Cognizant as we are of our history and of the need for the nation to confront it, Independence was a watershed moment to heal the wounds of the past. Historical wrongs cannot be remedied by the people taking the law in their own hands. In preserving the character of places of public worship, Parliament has mandated... that history and its wrongs shall not be used as instruments to oppress the present and the future."

Interestingly, the Justices empathically disapproved the judgment of Justice D.V. Sharma of the Allahabad High Court against which they were hearing the appeals in which the judge had held that the "Places of Worship (Special Provisions) Act, 1991 does not debar those cases where declaration is sought for a period prior to the Act came into force or for enforcement of right which was recognised before coming into force of the Act." The Justices held that "The above conclusion of D V Sharma, J. is directly contrary to the provisions of Section 4(2)", and that, "Section 4(2) specifically contemplates that all suits, appeals and legal proceedings existing on the day of commencement of the Places of Worships Act, with respect to the conversion of the religious character of a place of worship, existing on 15 August 1947, pending before any court, tribunal or authority shall abate, and no suit, appeal or proceeding with respect to such matter shall lie after the commencement of the Act. …Clearly, in the face of the statutory mandate, the exception which has been carved out by Justice D V Sharma runs contrary to the terms of the legislation and is therefore erroneous".

The Supreme Court's order on August 4, 2023 refusing to stay the order of the Allahabad High Court dated August 2, 2023 in the Anjuman Intezamia Masjid Committee challenging the order of the Allahabad High Court which affirmed the order of the District and Sessions Court, Varanasi dated July 21, 2023 raises serious questions about its legality, propriety and justness. The Bench comprising CJI D.Y. Chandrachud, Justice J.B. Pardiwala and Justice Manoj Misra, are, with the greatest respects, completely wrong in allowing the Archaeological Survey of India (ASI) survey on the premise that the key question for any determination under the Act of 1991 is the religious character of a place of worship as it existed on August 15, 1947. The Bench has singularly failed to follow a binding precedent to which Justice Chandrachud himself was a party in the Ram Janmabhoomi temple case. There can be no doubt in anyone's mind that the Gyanvapi mosque has been a place of public worship for centuries for Muslims and, therefore, there is an absolute and total bar on changing its character in any manner, into a place of worship of a different religious denomination.

If the nature of the mosque is untouchable since it existed on August 15, 1947, then what purpose can an ASI inquiry be directed at? And what purpose can it achieve? The Court never allows or grants futile reliefs.

The Supreme Court has completely overlooked that the obligations under the Act were upon the state as also on every citizen of the nation and those who govern the affairs of the nation at every level were bound by it.

The Supreme Court is the ultimate custodian of constitutional values and morality. Applying the spirit of the judgment of Ram Janmabhoomi temple case, the three courts ought to have been extraordinarily mindful about the rights and feelings of the minority community. At a crucial time when elections are approaching,, any majoritarian approach can create serious misgivings in the minds of sections of society.

Bigotry during parts of the Islamic period has always stood condemned; in fact that led to the rise of the powerful Marathas, Rajputs and Sikhs, resulting in overthrowing the Muslim empire.

The question now is this: how far do we go from here? Do we order such a survey for every mosque because claims will be made by people across cities and villages? Someone may even suggest that we dig up the Red Fort and the Taj Mahal. There is also a plea on the Court “praying for a scientific survey” of the Mathura mosque. The Supreme Court has opened a Pandora’s box.

We must remember that while injustice was done to the Hindus by Muslim rulers, democratic India cannot perpetuate them to undo them. One can only remember that rulers like Akbar respected Hindus and allowed religious freedom to them. The Bhakti movement which produced some of the greatest saints such as Chaitanya, Surdas, Tulsidas, Gopala Bhatt, Sankardeva, Eknath, Tukaram, Dadu, Meera Bai, and Guru Nanak raised the status of non-Brahmins, especially Dalits amongst Hindus. In that sense, religion was democratised.

When history is written in future, there should not be any reference that the Hindus of the 21st century indulged in religious bigotry. For over 5,000 years Hinduism has been a way of life and one of the greatest religions marked by Liberalism, Tolerance and Absorption. Let us hope for peace and prosperity in our beloved India.

Dushyant Dave is a Senior Advocate in the Supreme Court of India

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TIERS APART: ON THE ‘ONE NATION, ONE ELECTION’ TRIAL BALLOON

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

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In a multi-tiered governance system such as the one in India, a Union of States, electoral democracy works by allowing people to choose their representatives for each tier based on their perception of who is best suited to represent them for each specific tier. There is a reason why there is a demarcation of power between the Union, States and local body institutions and why there is a voter mandate every five years to elect representatives for Parliament, Assemblies and local bodies. The demarcation allows for specific roles for each representative across these tiers and suggests varied voter choices that could be based on party affiliation, candidate strength, ideological positions or simple socio-economic reasons specific to each constituency. That some States such as Andhra Pradesh and Sikkim hold simultaneous Assembly and parliamentary polls is a coincidence as their electoral cycle has coalesced with that of parliamentary polls. The BJP-led Union government’s trial balloon, exploring the feasibility of simultaneous elections for all levels through a committee led by former President Ramnath Kovind, militates against the foundational idea of multi-tiered governance and is anti-federalist. Dangerously, one of the committee’s terms of reference — to “examine and recommend, if the amendments to the Constitution [for the purpose of holding simultaneous elections] would require ratification by the States” — is a proposition that is anti-constitutional and will not stand legal scrutiny. It also advances a motive that would curtail many Assemblies much before their scheduled tenures — an untenable prospect.

Ostensibly, the proposal speaks of the need for simultaneous elections as a cost-cutting exercise allowing voting in parliamentary, Assembly, municipal and panchayat elections in one go. It also stems from the flawed notion that governments are forever in campaign mode because of frequent Assembly elections. First, there is no study to prove that there will be significant cost-saving with simultaneous elections and in any case, the costs incurred in the conduct of elections are not essentially wasteful as there is a multiplier effect to campaign spending and economic activity around polls. Elections for different levels also allow voters to hold their representatives to account and for their specific grievances to be noted. Second, the conduct of various elections at different points of time is to only elect representatives for these tiers and is not a referendum on just one tier or even an individual leader at every point of time, as the BJP has sought to make it. Those in civil and political society who are committed to India’s federal structure should argue for separation of the Lok Sabha election from polls to Assemblies as the campaign issues and democratic choices vary. In any case, unless the term of each Lok Sabha and Assembly is fixed, and premature dissolution for whatever reason is

barred, the idea is unworkable.

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A ‘DISTRACTION’ BALLOON IN THE WINDS OF FEDERALISM

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‘The one election idea smacks of arrogance and ignorance of India’s political diversity’ | Photo Credit: Getty Images/iStockphoto

The ‘one nation one election’ proposal mooted yet again by the Narendra Modi government is deeply flawed. The reasons for the proposal are fallacious. The idea is unimplementable. It is nothing but a ‘distraction’ balloon floated to tide over the negative headlines about the Prime Minister’s cronyism and the Chinese President Xi Jinping’s snub to the G-20 summit.

The government argues that India is in a ‘permanent campaign’, to borrow the words of the American political commentator Sidney Blumenthal. India has had either a State or a national election every year for the last 36 years. This devours enormous financial resources and efforts, and the time of the government and political parties is the seeming concern. An election held constantly in some part of the country with a ‘model code of conduct’ distracts from governance and leads to policy paralysis. This is the essence of the opening argument in the notification issued a few days ago to constitute a panel to study a ‘one nation one election’.

Except ‘India’ does not have an election every year, one of India’s States does. There is a fundamental difference between the two. When there is an election in say Bengal, with the Trinamool Congress, the Congress, the Bharatiya Janata Party (BJP) and the Left contesting, a Tamil Nadu governed by the Dravida Munnetra Kazhagam or the All India Anna Dravida Munnetra Kazhagam is not impacted. An election in Assam with a model code of conduct does not stop road projects or ‘development’ in Gujarat. So, when there are elections in a few States, ‘India’ is not in an election mode; some of India’s States are. All of India’s major political parties are not in an election mode, only some are. It is important to not conflate the two, since this notion is the basis for all arguments used to propagate the ‘one election’ idea.

The national parties with a Delhi-based high command culture such as the Congress and the BJP are the ones that may feel the pressure of constant elections because municipal or State elections held in any part of the country involve their national leadership — especially, when the campaigners-in-chief of the BJP, for a local body to a State election held anywhere in the country, also happen to have the important jobs of Prime Minister and Home Minister, it can feel like they are being stretched in a ‘permanent campaign’ and sidetracked from governance. But if the BJP chooses or wants to fight all elections in the country with the Prime Minister as their

campaigner-in-chief and the Home Minister as their sole election in-charge, it is their flaw and not the nation's problem. It is certainly not a virtue for a Prime Minister to be so frequently relegating the duties of his office, meant to serve all citizens, to a lower priority such as the electoral interests of his party.

Each of India's States has different political cultures and parties. Why should the basic constitutional structure of the country be changed for two national leaders to help balance their campaign and governance schedules, under the alibi of perennial elections? The one election idea is only for the convenience of the BJP's campaign and smacks of arrogance and ignorance of India's political diversity. Furthermore, this is an attack on and an affront to India's federalism. Today, an elected Chief Minister of a State has the powers to recommend dissolution of their State legislatures and call for early elections, as Telangana Chief Minister K. Chandrashekar Rao (KCR) did in 2018, breaking the cycle of simultaneous State and Parliament elections in the State. Under a 'one election' framework, KCR will not have the right to do this. Why should these powers be taken away from the States and only the Union government have the powers to dictate the election schedule for every State? This is yet another blow to India's federalism.

Yet another misleading argument put forth in support of the idea is that between 1951-52 and 1967, India had simultaneous elections, and hence it is appropriate to revert to that system. That was not by design but by happenstance, since all States started off the block at the same time and had stable tenures in the first two decades after Independence. It is a testament to India's plurality and the need for diverse political representation that a plethora of regional parties mushroomed over the last six decades to govern various States as per their own election schedules as the State's politics warranted. It is foolhardy and regressive to forcibly re-synchronise the election schedules of various States by design.

Cost savings is the other reason cited for a concurrent elections proposal, something that even knowledgeable political commentators fall for but one that is deceptive.

Various estimates by the Election Commission, NITI Aayog and the government show that the costs of conducting all State and parliamentary elections in a five-year cycle work out to the equivalent of 10 per voter per year. The NITI Aayog report has also said that when elections are synchronised, it will cost the equivalent of 5 per voter per year. If any, in the short term, simultaneous elections will increase the costs for deploying far larger numbers of electronic voting machines and control units. So, it is laughable to imply that India's federalism needs to be subverted, political diversity thwarted, and the constitutional structure amended to save 5 for every voter in a year. The government could have saved that amount just by not building the grand 'Central Vista' in Delhi. Political parties and candidates may spend a lot more money on elections than the government but that is not the tax-payers' money. On the contrary, there is economic research to suggest that such election spending by parties and candidates actually benefits the economy and the government's tax revenues by boosting private consumption and serving as a stimulus.

The government's logic is incompatible with the vagaries of a parliamentary system in a large and diverse democracy. A single election calendar may work in a presidential system where the survival of the executive is not dependent upon a legislative majority. In India's parliamentary democracy, this is ipso facto a non-starter and one should not be wasting the nation's time deliberating on this.

'One nation one election' is a politically unfeasible, administratively unworkable and constitutionally unviable proposition. The idea is premised on flimsy and shallow grounds of cost savings, policy paralysis and governance interference. It is nothing but a deliberate ploy of the Narendra Modi government to move the headlines away from cronyism and China. That it chose

to use ‘one nation one election’ to deflect attention is a reflection of its dismal lack of belief in India’s federal democratic parliamentary structure. The real implicit message underlying the Modi government’s ‘one election’ distraction is the clear ideological divide in Indian politics today — the BJP’s “India is a uniform nation and polity” versus the INDIA alliance’s “India is a union of diverse states and polities”. Those of us who believe in the real India will never seek to shoehorn it into a deranged fantasy of unitarism dressed up as efficiency.

Praveen Chakravarty is a political economist and Chairman of the Congress party’s Data Analytics. Shashi Tharoor is a three-term Member of Parliament (Congress) and Chairman of Professionals Congress

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THE CASE FOR ELECTIONS IN JAMMU AND KASHMIR

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At a polling station, in 2014 | Photo Credit: AFP

The Narendra Modi administration's recent announcement of a committee to look into simultaneous State and Union elections indicates that Jammu and Kashmir is unlikely to go to the polls anytime soon, despite assurances that the administration is ready whenever the Election Commission of India (ECI) decides. Meanwhile, the ECI remains bafflingly silent though Jammu and Kashmir's Chief Electoral Officer has stated that panchayat, municipal and Lok Sabha elections will all be held this 'financial year'. If those elections can be held, why not Assembly elections? The reason cannot be security: panchayat elections have to be conducted on a much larger scale as they involve over 30,000 posts.

In March 2023, a delegation of 13 political parties, led by Farooq Abdullah of the National Conference, met ECI officials to urge that Assembly election dates be fixed. Any further delay, their memorandum said, 'would amount to denial of fundamental and democratic rights of the people of Jammu and Kashmir and a breach of constitutional obligations'. The delegation was assured that its request would be considered, but no action has been taken to date.

Jammu and Kashmir has not held legislative elections for the past nine years. The last Assembly election was in 2014, and the last elected administration fell in June 2018. After almost a year of President's Rule, the Jammu and Kashmir Reorganisation Act, 2019 divided the State into two Union Territories. Like the National Capital Territory of Delhi, Jammu and Kashmir is entitled to an elected Assembly with curtailed powers (for example, law and order remained with the Union Home Ministry and security with the Lieutenant-Governor); Ladakh is not.

The ostensible reason for the election delay was the reorganisation Act's requirement of a fresh delimitation of constituencies following their expansion to 114 from 107. Jammu and Kashmir's delimitation had earlier been frozen till 2026, in tandem with other Indian States. In 2019, it was added to four other States to be delimited; the process was later postponed for the four other States, leaving only Jammu and Kashmir. The Delimitation Commission submitted its final report in May 2022. Its recommendations raised two concerns: it gave six of seven new seats to Jammu and only one to the Valley, derogating from the democratic principle of equal representation. With 56.15% of the erstwhile State's population, the Valley was allocated 47 seats as compared to Jammu's 43 with 43.85% of the population. Former State Finance Minister Haseeb Drabu likened the award to weighting Kashmir's voter at 0.8 to Jammu's 1.

The commission's rearrangement of political constituencies concentrated minority voters in fewer districts or spread them across multiple districts, vitiating their vote share. In Jammu division, for example, Hindu-majority Padder with a population of just over 50,000 was allotted an Assembly seat, while thrice as numerous Muslim-majority Surankote was not. Former Chief Minister Mehbooba Mufti called it a 'tactical process of rigging before the elections'.

Changes in residency rules further skewed constituency balance. Prior to 2019, non-permanent residents were not eligible to vote in Assembly elections. After the reading down of Article 370 and withdrawal of Article 35A, any person 'ordinarily resident' in the former State became eligible to vote, including any person resident for more than 15 years; any person who had studied there for more than seven years, and any person registered as a migrant by the Relief and Rehabilitation Commissioner (Migrants). As a result, a staggering 7.7 lakh new voters (net figures, after accounting for deletion of four lakh voters) were added to the existing voter pool of 78.4 lakh.

Proposed fresh reservations will further narrow the number of seats available in the general category and/or expand competition within reserved categories. Of four new Bills proposed by the Union Law Ministry, the first, the Jammu and Kashmir Reorganisation (Amendment) Bill, 2023, reserves two seats for 'Kashmiri migrants' (one woman), and one for people displaced from Pakistani-held territories of Jammu and Kashmir. All three seats are to be filled by nominees of the Lieutenant-Governor.

The second Bill, the Constitution (Jammu and Kashmir) Scheduled Tribes Order (Amendment) Bill, 2023, includes the Pahari community and a handful of small tribes in Jammu and Kashmir's list of Scheduled Tribes. Paharis will now be able to contest reserved seats which were previously dominated by Gujjars and Bakerwals. The most affected area will be the Pir Panchal range along the Line of Control with Pakistan, which includes Rajouri and Poonch, where Paharis are in a majority in seven out of eight Assembly segments. It has four seats reserved for Scheduled Tribes.

The third Bill, the Constitution (Jammu and Kashmir) Scheduled Castes Order (Amendment) Bill, 2023, includes the Valmiki community, earlier considered non-permanent residents, in Jammu and Kashmir's list of Scheduled Castes.

The fourth, the Jammu and Kashmir Reservation (Amendment) Bill, 2023, adds 15 more 'other backward classes' (OBCs), including West Pakistan refugees and Gorkhas. The electoral impact of these two Bills will also be mostly in Jammu, which has the largest number of Scheduled Castes and OBCs.

At face value, there can be little objection to these provisions. Effectively, it is another matter. Pandit migrants have been elected without reservation for decades, even during the insurgency and after their exodus. They do not need reserved seats, they need security when elected. Gujjars accept Pahari reservation if it does not cut into their quota but have received no assurance of that. Long-term residents such as refugees, Gurkhas and Valmikis should be entitled to vote, but does the former require a reserved seat? Given these gaps, the Bills risk entrenching caste- and community-based voter polarisation in a region of many castes and communities.

Successive reports from the ground suggest that alienation has spread across the former State. In Muslim-majority areas, people note that the number of their representatives will shrink. In Jammu, they suspect that fresh reservations are directed towards creating new support for the Bharatiya Janata Party where the party is fading. In Kashmir, Home Minister Amit Shah's repeated attacks on political leaders and repeated assertions that 'future legislators' will emerge

from panchayats, signal that the Union administration seeks supplicant legislators.

Despite their fears, most people now desire a speedy Assembly election. The unilateralism, nepotism and inaccessibility of Jammu and Kashmir's centrally-directed administration has led to higher than ever unemployment and loss of land and resource rights, leading even supporters of the August 2019 actions to believe they will do better with elected representatives, especially since Statehood will only he restored after elections, according to Mr. Shah.

Meanwhile a welter of discontent is brewing in Ladakh, where the powers of the elected Hill Councils have been whittled to puny by the Lieutenant-Governor's office. Here too, the demand for Statehood is gaining ground.

Holding an Assembly election before the year-end can build confidence, as prior experience shows. The Atal Bihari Vajpayee administration held elections in 2002, at a time when insurgency had taken a heavy toll. But that election ushered in 12 years of peace-building, with two free and fair elections. By contrast, the attempt to rig the 1987 election led to over a decade of armed conflict. The lesson is plain to see for all but the intentionally blind.

Radha Kumar is a writer and policy analyst

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India and Bharat have both evoked the same emotions among patriots for decades, but these labels of pride have now been weaponised for narrow political ends. The Bharatiya Janata Party government at the Centre has decided to use Bharat instead of India in some official communication and documents, a practice that its representatives say will now expand. ‘India, that is Bharat,...’ is how the Constitution of India names the country, and the use of one or the other has been largely contextual all this while. The cultural echoes of Bharat have never been in doubt, and the current hype around it is more about a campaign to discard the use of India, as if both cannot exist in harmony. India, according to this telling, is a foreign imposition, and hence unsuitable for national dignity. Bharat, linked as it is to various ancient sources, goes beyond the geographical and cultural landscape that constitutes the modern republic of India. In that sense, both names are an outcome of India’s nation-building journey. Labouring to tease out the foreign from the native in the expanse of this nation that hosts a multitude of ethnic, linguistic, and genetic diversity and that has been formed as a result of millennia of migrations and cross-currents of human interactions serves no purpose other than creating new flashpoints in society.

This farcical hubbub hoisted upon the country should have been allowed to dissipate and recede, but the knee-jerk reaction of the Opposition gave it the aura of a fundamental identity question before the nation. The Rashtriya Swayamsevak Sangh has been asking for privileging the use of Bharat over India for long, but the Opposition bloc’s decision to label itself INDIA as an acronym also might have influenced the BJP’s hurry in the naming exercise. Far from demonstrating a nation’s strength and pride, the government’s name game undermines the confidence and soft power of the nation. Bharat has been part of popular culture, political and cultural idioms, and literature across many Indian languages. Similarly, India is also used by millions within and outside the country who yearn for its progress. It is possible that contexts and constituencies of these proper nouns might vary, but that is the very reason to desist from attempting to impose the use of one and edge out the other. Whether it is India or Bharat, the essence of the meaning that it conveys remains the same. The needless juxtaposition of the two names should not affect the bonding of the inhabitants in the pursuit of a misplaced cultural combat. Let India and Bharat coexist as they have always been.

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ONE NATION, MANY ELECTIONS: THE HINDU EDITORIAL ON THE SEVEN BY-ELECTIONS, THEIR POLITICAL SIGNALS

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

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Bypolls in seven Assembly segments in six States across the country threw up mixed political signals. The Bharatiya Janata Party (BJP) won three and Opposition parties won four. There is no national pattern to be sought in these elections that answer widely different situations and calculations, but the polls do offer pointers to local shifts. In Ghosi in Uttar Pradesh, the BJP's Dara Singh Chauhan lost the election to the Samajwadi Party (SP) candidate. Mr. Chauhan represented a pattern of BJP expansion through defections and allurement. He was the sitting SP MLA who crossed over to the saffron party and sought re-election as a BJP MLA. The SP candidate was supported by the Congress, the CPI(M) and the CPI(ML)-Liberation, broadly the INDIA bloc of Opposition parties in the State. Uttar Pradesh is critical for the BJP's fortunes in 2024, and the Ghosi by-election had turned high profile after SP chief Akhilesh Yadav, who had been keeping his head down for some time, and Chief Minister Yogi Adityanath both campaigned hard. The BJP also sought to reinforce its multi-caste Hindu coalition in the by-election, but it did not find favour with voters in the end. The BJP retained a seat in Uttarakhand, while it lost a sitting seat in West Bengal to the ruling Trinamool Congress (TMC). The ruling Jharkhand Mukti Morcha retained Dumri in Jharkhand.

Dhupguri in West Bengal witnessed a combination of INDIA bloc parties facing off against another constituent, while Puthuppally in Kerala had the parties in the combination fighting each other. In Dhupguri, the CPI(M) and the Congress jointly opposed a third INDIA partner TMC, and finished a distant third. The TMC is eager to prevent an alliance between the Congress and the CPI(M), both of which are confused and struggling to survive in West Bengal. In Kerala, fronts led by the CPI(M) and the Congress, clashed for the seat vacated by the death of Congress veteran Oommen Chandy. His son Chandy Oommen romped home comfortably. Though it had repeatedly framed the by-election as a test of Chief Minister Pinarayi Vijayan's governance, the Left's stakes in Puthuppally were not as high as they were in Boxanagar in Tripura which it lost for the first time since 1988 to the BJP. The BJP also retained Dhanpur in the State. The CPI(M) has alleged electoral malpractices and violence by the ruling BJP in Tripura. The outcomes were largely decided by local factors, but they also indicate the political winds in the respective regions.

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election / Uttar Pradesh / Uttarakhand / West Bengal / Kerala / Tripura / Bharatiya Janata Party / Indian National Congress / All India Trinamool Congress / Jharkhand

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AN OVERHAUL, THE CRIMINAL LAW BILLS, AND THE BIG PICTURE

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‘Overall, some of the proposed changes are definitely progressive in nature, but cannot be termed as path-breaking or radical’ | Photo Credit: Getty Images

The central government introduced three Bills in Parliament in August. Called the Bharatiya Nyaya Sanhita (BNS), 2023, the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 and the Bharatiya Sakshya (BS) Bill, 2023 they are to replace the existing Indian Penal Code, 1860, the Code of Criminal Procedure (CrPC), 1973 and the Indian Evidence Act, 1872, respectively. Though some amendments have been made and gaps filled through judicial pronouncements, the statutes have stood the test of time. It is worth examining how the proposed changes will impact law enforcement agencies.

There is an explicit provision in the BNSS on the registration of a cognisable offence in any police station, irrespective of the area where the offence is committed. Though this practice (known as recording first information report, or FIR at Zero) has been in use for many years now, its formal inclusion in the BNSS may help complainants get their cases registered as a matter of right without running around.

A provision has been added to permit the conduct of a preliminary inquiry to ascertain the existence of a prima facie case even if the information discloses commission of a cognisable offence punishable with more than three years but less than seven years of imprisonment. This is at variance with the ratio of the Supreme Court judgment in Lalita Kumari versus Govt. of Uttar Pradesh (2013), where it was held that the police have no option but to register an FIR if the information discloses commission of a cognisable offence. Though certain categories were carved out to conduct a preliminary inquiry, this was only to ascertain commission of a cognisable offence and not check their truthfulness.

As there does not seem to be an intelligent differentia vis-à-vis the rest of the cognisable cases with overall objective of the provision, this differentiation may not stand scrutiny in constitutional courts. Nevertheless, this clause has advantages and disadvantages. The parties at dispute may arrive at a compromise in the given limit of 14 days to conduct a preliminary inquiry, or cases may not turn out to be true, prima facie, to proceed further. On the other hand, the police may misuse this period and avoid registering even true cases.

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

All provisions of the CrPC on arrest have been retained in the BNSS. It would have been appropriate to include the ratio of the Supreme Court judgment in Arnesh Kumar versus State of Bihar (2014) to justify an arrest by making it mandatory for the police officer to mention reasons of arrest supported with justifiable material, and for the judicial magistrate to record satisfaction and make it a formal part of the BNSS.

A new clause says that for offences punishable with less than three years of imprisonment, an arrest could be done only with the prior permission of Deputy Superintendent of Police if the accused person is infirm or is aged over 60. This may provide some relief to these two categories of persons provided the Deputy Superintendent of Police uses the clause judicially.

The new Codes provide for handcuffing in at least a dozen categories of persons who are accused of serious offences inter alia such as one who commits a terrorist act, murder, rape, acid attack or offence against the state. This is sure to help police, who may be short staffed, to secure their custody. But the enabling section that guides handcuffing has not changed. It says that ‘the person arrested shall not be subjected to more restraint than is necessary to prevent his escape’. Therefore, the investigating officer will still have to justify handcuffing with the possibility of escape (or physical attack) when such criminals are produced before court. Since the constitutional provision and enabling provision of the law remain unaltered, the Supreme Court’s guidelines on handcuffing will still prevail.

The new Sanhita provides for a mandatory visit of the crime scene by a forensic expert and the collection of forensic evidence for offences punishable with more than seven years of imprisonment. But on realisation of the ground reality (of limited forensic infrastructure at field level), a maximum five years of leverage has been given to State governments to bring this clause into operation. Therefore, unless State governments commit themselves to the provision of sufficient resources for the development of forensic infrastructure (technology and manpower), the impact of this change may not be visible soon. The Sanhita rightly encourages the use of audio-video means in recording the various steps of investigation; this includes searches. However, the preferred use of smartphones (as recommended) has its limitations. The Supreme Court in Shafhi Mohammad vs The State Of Himachal Pradesh (2018) directed the Ministry of Home Affairs and States to develop facilities for the videography and photography of crime scenes during investigation at the level of the police station. A pilot project is in progress, and this needs to be taken forward to ensure that the provisions of the new Code are implemented in their true spirit.

Despite a ban on the two-finger test in a case of rape, and this test having been termed by the Supreme Court to be unscientific and violative of the dignity and privacy of a rape victim/survivor (in Lillu @ Rajesh & Anr vs State Of Haryana, 2013), the ban does not have a place in the Code. Since the Union Ministry of Health and Family Welfare had also issued similar instructions, with guidelines for the medical examination, this was a good opportunity for the central government to have ensured compliance of its own instructions in a legal way.

On the disclosure of identity of victim/survivor of rape, the provision of giving authorisation (to disclose identity) to the next of kin in case the victim is minor, may also be omitted as the Protection of Children from Sexual Offences Act, which exclusively deals with this issue and does not have a similar provision. The Supreme Court in Nipun Saxena vs Union Of India (2018) also expressed reservations as the next of kin may not be an appropriate party to delegate such authority.

A provision in the Sanhita that has raised the eyebrows of critics is the increase in the period of

police custody exceeding 15 days, as provided in the CrPC. This may help the police to interrogate an accused person again if additional evidence is found during an investigation. However, there are two caveats to this provision. First, there must be adequate grounds to permit an extension. Second, the 15 day limit can be exceeded only after the initial 40 days or 60 days out of a total detention of 60 days or 90 days (depending on whether an offence is punishable with imprisonment of up to 10 years, or more). The accused will still be eligible to be released on default bail after a total detention of 60 days or 90 days, as provided in the CrPC. Thus, the discretion to permit additional police custody rests with the judiciary.

The Sanhita also proposes enlarging the scope of judicial inquiry into suspicious deaths by including dowry deaths, but relaxes the provision of the mandatory recording of statement of a woman, a male under the age of 15 or above 60 (65 years in the CrPC) at the place of their residence based on their willingness. It is hoped that this provision is not misused by the police, especially in crimes against women and children.

A standing order that could have been included in the Sanhita with respect to inquest is the videography and photography of a post-mortem, particularly in cases where it is a custodial death or is a death caused in an exchange of fire with the police or other authorities. The Supreme Court and the National Human Rights Commission of India have repeatedly asked States to comply with such instructions. Another observation of the Court to make a spot sketch of the scene of crime drawn on scale by a draftsman in order to make it admissible in court, could also be included in the Sanhita to improve the quality of investigation.

Overall, some of the proposed changes are definitely progressive in nature, but cannot be termed as path-breaking or radical. What must not be forgotten is that police stations are generally under-staffed, have poor mobility, insufficient training infrastructure and poor housing facilities. Police personnel work under stressful conditions. Therefore, the colonial mindset will go only if police reformation is taken up in its entirety and not just by tweaking some provisions of the applicable laws.

R.K. Vij is a retired Indian Police Service officer. The views expressed are personal

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THE LARGER PROJECT OF SUBVERTING THE IDEA OF INDIA

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“It is only the electorate that now has the power to decide if they want to live with this particular idea of ‘One India’.” | Photo Credit: The Hindu

The government’s ‘simultaneous elections’ agenda goes much further than the other ideas of ‘oneness’ it propounds; it will spell a deepening of centralisation

It would be dangerous to dismiss the fresh impetus to introduce “simultaneous” elections to the Lok Sabha and the State Assemblies as yet another gimmick in the run-up to the next general election scheduled for 2024.

Editorial | Tiers apart: On the ‘one nation, one election’ trial balloon

While several committees since 1999 have examined the proposal, the push to introduce and make permanent simultaneous polls once every five years has come over the past decade, with Prime Minister Narendra Modi often speaking about its desirability. This, however, is perhaps the first time that a high-level committee is headed by a former President of India, a most unusual appointment that is meant to impose a stamp of legitimacy on the recommendation.

Of all the “One India” decisions taken by the Union Government since 2014, this proposal is the most important. If carried through, it will further centralise power in New Delhi, strengthen the hold of national parties when in office, and reduce the importance of regional parties. This is the immediate political purpose behind putting in place and codifying a system of simultaneous polls.

The idea is being sold under the garb of saving expenditure and avoiding the disruption of administration during elections. The argument that elections somewhere in the country throughout the year disrupt ‘hard work and good governance’ and are an expense we can ill-afford is a simplistic one. It yet appeals to a section of an electorate that is unhappy with bureaucratic and insensitive governance.

However, there has been a substantial body of analysis by independent commentators pointing out both the false rationale for and negative implications of introducing such a system. The burden of government expenditure on elections is not so large as to warrant such a change. The

Model Code of Conduct need not come in the way of governance ahead of elections. Governance does indeed become affected when elections happen to be held in one State or the other every year. But this is only when the party holding office in New Delhi is forever in an election mode. When the ruling party or coalition at the Centre refuses to take national decisions fearing what impact it will have in one State or the other, then governance is disrupted. And it becomes an even bigger problem when the ruling party sees every election from a municipal election upwards as a must-win poll and all its senior functionaries spend as much time on campaigning as on governance. (As Y.V. Reddy, the chairman of the Fourteenth Finance Commission, pointed out five years ago in a wide-ranging discussion of this idea, elections are meant to hold governments accountable for their record of governance, and yet when they turn out to be frequent they are being faulted for disrupting governance.)

An argument made in favour of legally mandating simultaneous polls draws on evidence from one study conducted of voting percentages between 1971 and 2004 which showed that voter turnout in the States is lower when Assembly elections are held separately from those to the Lok Sabha. But this argument is only a rationalisation for the simultaneous polls idea. A higher voter participation is to be welcomed but it should be increased through other means rather than with a set of measures that will turn parts of the Constitution upside down.

A number of scholars and commentators have also pointed out that one way or the other, major constitutional changes will need to be made to the constitutional terms of the legislature and rules for unseating a government. After the first round of curtailing/extending the tenure of elected State governments, making simultaneous polls a permanent feature will require either fixed term governments, or the end of no-confidence motions, or “super-majorities” to unseat governments, or greater powers in the hands of the President/Governors, or a combination of such drastic changes. The alterations will in effect change the Basic Structure of the Constitution. All of this will reduce the importance of State governments, with the idea of federalism being given a body blow. There will be a corresponding concentration of power in New Delhi.

The entire “One Nation, One X” agenda is part of a political project with the message that only one government, one political party and one leader can deliver and will transform India. The steady expansion over the years of Union government into the States’ domain in providing social and economic services, the intolerance of the Bharatiya Janata Party towards any political party unless it is a supporter, and the multi-dimensional projection of the Prime Minister as a leader who will change India as no one has before are part of this political project.

There is the larger well-known ideological agenda of denying India its strength in heterogeneity. It is instead a complete homogeneity that is valued — one nation with one dominant religion and one dominant language, if not one nation with one religion and one language. Where earlier the unifying message was unity in diversity in this land of heterogeneous peoples, communities, traditions and languages, the aim now is to impose a unity with a ‘oneness’. A stamp of homogeneity to wipe out the unique Indian character of diversity.

This will not be an easy task to accomplish even for a political formation with a 100-year-old ideological programme. To turn one of the current slogans on its head, the character of a civilisation with some thousands of years of history cannot be changed during a few terms of a government, however brute its majority in Parliament. This will not be for want of trying though.

The “One Nation, One Election” agenda goes much further than “One Nation, One Tax”, “One Nation, One Ration Card” and the like in imposing this “oneness”. If implemented, it will permanently increase multifold the administrative and political centralisation of power in the hands of the Union Government and correspondingly weaken the States.

We have been in the midst of a fortnight of frenetic political activity. A special session of Parliament has been convened by a government which has still not laid out its agenda. This will be an unusual sitting convened by a government which is otherwise only interested in ramming through legislation without debate. We have had the noise about “Bharat” and whether henceforth the country will be officially called only Bharat and not, as now, “India” and “Bharat”. All this on top of the new push for holding simultaneous polls which has been bandied about since 2014.

When and what will the high-level committee on simultaneous polls recommend? We do not have to guess what a committee that has been given a set of made-to-order terms of reference and seems to be packed with the king’s men will come up with. (The lone member from the Opposition had little option but to opt out of a committee that was suddenly announced without any prior consultation.)

How do we deal with such a proposed subversion of the Constitution? A Parliament that has been neutralised, a judiciary that is supine, a media that is largely subservient and a civil society that has been emasculated will not be able to resist the government’s plans. It is only the electorate that now has the power to decide if they want to live with this particular idea of “One India”.

C. Rammanohar Reddy is a senior journalist

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DROP THE BAD IDEA OF SIMULTANEOUS ELECTIONS

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‘The administrative benefits from simultaneous elections are overstated at best, and non-existent at worst’ | Photo Credit: The Hindu

In recent weeks, there has been increasing discussion about the possibility of having national and State elections at the same time, popularly known as ‘one nation, one election’. The formation of a committee, helmed by a former President of India, Ram Nath Kovind, to determine how this might be implemented, and what manner of constitutional changes might be required to make it a legal reality, have generated further debate. The primary arguments in favour of simultaneous elections are twofold: first, that it will decrease the costs of conducting elections (and of electioneering); and second, that it will free up political parties from being in ‘permanent campaign mode’, and allow them to focus on governance (and, for that matter, constructive opposition) for a five-year period.

Against this, critics have pointed out that when you crunch the numbers, the actual financial savings are relatively minuscule. Furthermore, it is a relatively recent pathology of the Indian political system that central government Ministers and politicians spend a significant amount of time campaigning in State elections: if the concern, therefore, is that frequent State elections hamper governance and the business of Parliament, then simultaneous elections seem a needlessly complicated answer when a simple one is available: that State elections should be primarily fought by State party units, while national politicians can get on with the task of governance. The reality, however, is that the increasingly centralised — and presidential — character of Indian election campaigns means that this is unlikely to be a reality in the near future.

Editorial | Tiers apart: On the ‘one nation, one election’ trial balloon

Critics of simultaneous elections have raised a few other objections. First, the logistical nightmare of conducting simultaneous elections in a country of a little over 1.4 billion people, in a context where even State elections need to take place in multiple phases.

The second, and graver concern, is the incompatibility of a rigid election timetable with some of the fundamentals of parliamentary democracy: as is well-known, at the time of Independence, central and State elections were conducted simultaneously. This arrangement broke down towards the end of the 1960s because of the use of Article 356 of the Constitution, which authorises the Union to suspend (or even dismiss) State governments in a narrowly-defined

range of circumstances; but also, and apart from that, the essence of parliamentary democracy is that at all times, the government must enjoy the confidence of the House, failing which it must step down, and go back to the people for a fresh mandate.

Consequently, it is obvious that even if, legally and practically, one is able to synchronise central and State elections for one cycle, this will break down the moment a government falls. To this, two solutions have been proposed, both of which tend to make the problem worse. The first is that President's Rule (i.e., central rule) will be imposed in that State until the five-year-period is over. Needless to say, this will starkly undermine both federalism and democracy. The second is that elections will be held in that State, but the term of the new Assembly will only be until the next cycle (which could be in a year, or three years, or four years). Not only does this undercut both the justifications for simultaneous elections — cost and an avoidance of continuous campaign — but, rather, leads to perverse incentives (for example, how much 'governance' will a State government be able to do if elections are scheduled in a year?).

The upshot of this is that there will be a strong push towards avoiding the fall of a government, even when it has lost the confidence of the House in the ordinary course of things. And, as we have seen in India, there is an almost institutionalised remedy for this: defections, or "horse-trading". It is, by now, clear that the Tenth Schedule's prohibition on horse-trading has been rendered more or less a dead letter, as politicians have found various ways to get around this (and courts have not been successful in stopping it). Thus, as was pointed out by lawyer and parliamentarian Kapil Sibal in an interview recently, simultaneous elections are likely to see an explosion of horse-trading, where the political parties with the biggest pockets will be the biggest beneficiaries.

While these intractable issues speak to the implementation of simultaneous elections, at a deeper level, there are two principled and interrelated arguments against the idea: federalism and democracy.

First, let us take federalism. Over the years, it has increasingly come to be accepted that Indian federalism is not simply a matter of administrative convenience but also a matter of principle that recognises the legitimacy of linguistic, cultural, ethnic, and other forms of collective aspiration, through the grant of Statehood. In this context, there is, of course, Indian democracy at the central level, but also, at the level of each State, democracy takes its own set of claims, demands, and aspirations. Simultaneous elections risk a blurring of these distinct forums and arenas of democracy, with the risk that State-level issues will be subsumed into the national (this is inevitable, given the cognitive dominance of the national, as well as the fact that national-level parties frequently campaign in a national register, for understandable reasons).

A related point is that in our constitutional scheme, the federal structure is an important check upon the concentration of power (buttressed by the existence of the Rajya Sabha at the central level). The federal structure, in turn, is sustained by a plurality of democratic contests, and a plurality of political outfits, at the State level. Simultaneous elections, for the reasons pointed out above, risk undermining that plurality, and risk precisely the kind of concentration of power that federalism is meant to be a bulwark against.

Second, on democracy: despite the ringing words with which the Preamble of the Constitution begins, the "People" have very little space in the Constitution, especially when it comes to exercising control over their representatives. Unlike many other Constitutions, where public participation in law-making is a guaranteed right, along with other rights such as the right to recall, in the Indian constitutional scheme, elections are the only form of public participation in the public sphere. There is a different conversation to be had about why this is not enough, but given this framework, relatively regular and frequent elections allow for more extended public

participation and debate; simultaneous elections would shrink this scope substantially, without any countervailing changes to deepen it in other domains.

Therefore, it is clear that the administrative benefits from simultaneous elections are overstated at best, and non-existent at worst. However, the costs, both in the implementation and in the concept itself, are significant, and create non-trivial risks when it comes to protecting and preserving the federal and democratic design of the Constitution. These, therefore, are good reasons why the idea is a bad one, and ought not to be acted upon.

Gautam Bhatia is a Delhi-based lawyer

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PROBE AND PROBITY: THE HINDU EDITORIAL ON THE EVOLUTION OF ANDHRA PRADESH STATE SKILL DEVELOPMENT CORPORATION SCAM CASE

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Sifting through allegations of corruption and malfeasance against politicians, especially those in the Opposition, after cases are filed by a successor-government in Indian States is a knotty exercise. In States such as Andhra Pradesh, relations between the ruling regime and the Opposition have transcended political and ideological contestation and have veered deep into outright hostility and vendetta as seen in the ongoing rivalry between the ruling Yuvajana Sramika Rythu Congress Party and the Telugu Desam Party. Prima facie, the allegations by the Andhra Pradesh CID (AP-CID) about malfeasance in the Andhra Pradesh State Skill Development Corporation's functioning in 2014, are grave. The predecessor government (TDP) is accused of releasing funds for a skill development scheme for unemployed youth in the State, and allegedly diverting a major portion to shell companies, based on fake invoices, even as private partner entities which were roped in to invest in the scheme had not put in their requisite share. The AP-CID has claimed that there were other rule violations in the implementation of the scheme, even as the Enforcement Directorate (ED) launched a separate inquiry based on the FIR filed by the AP-CID in December 2021 leading to arrests of individuals who had purportedly benefited from the transfer of money from the government. The AP-CID has now named the former Chief Minister, N. Chandrababu Naidu (TDP), as the prime accused, leading to his arrest, with its Economic Offences Wing seeking to establish the link between him and other private beneficiaries of the government's release of money for the scheme.

A look at the evolution of the case, with Mr. Naidu being named the prime accused only recently, raises the suspicion of whether political vendetta is also guiding the investigations. Irrespective of the merits of the case, his incarceration will be seen in the light of the zealousness of agencies such as the ED to use arrests, especially those involving the political Opposition, as a political weapon in various cases. Rather than relying on documentary evidence in its investigations, the ED's recourse to high-profile arrests is now being replicated by State agencies as well. The onus is now on the AP-CID to establish a clear link between Mr. Naidu and the alleged irregularities in the scheme. Dealing with malfeasance and corruption cases is no easy task for State agencies. But if they are to tackle the problem of corruption in governance, such agencies must not be seen to be doing the bidding of the party in power. Else, such actions only result in the cynicism of the electorate about corruption and erode their trust in institutions.

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NO FILTER: THE HINDU EDITORIAL ON SECTION 6A OF DELHI SPECIAL POLICE ESTABLISHMENT ACT

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

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September 13, 2023 12:10 am | Updated 12:22 am IST

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A Constitution Bench of the Supreme Court has ruled that its 2014 verdict, invalidating Section 6A of the Delhi Special Police Establishment Act, the law that governs the CBI, will have retrospective effect from the day the provision was introduced in 2003. Section 6A provided that any investigation into corruption charges against officials of the rank of Joint Secretary and above, can begin only after the Central government's approval. It was introduced to restore the Centre's 'Single Directive', a set of instructions to the CBI on the modalities of holding an inquiry. In the landmark case of Vineet Narain (1997), the apex court had struck down the directive on the ground that a statutory investigation cannot be impeded by administrative instructions. Six years later, Section 6A was introduced to restore the prior approval requirement. However, in 2014, the Court struck down this section too, holding that it violated the norm of equality by extending its protection only to a class of public servants and not everyone. The latest judgment rejects arguments by some who are facing investigation that they should be given the protection of Section 6A as they were charged with offences that date back to the time before the 2014 judgment, when the provision was in force. The Court has reiterated the position that post-Constitution laws cannot be inconsistent with the Constitution and when they are so declared by a court, the invalidation is with effect from their inception.

The judgment is of limited applicability now, as it will impact only allegations that date back to the period between 2003 and 2014. The law as it stands now is quite different. In 2018, when the Prevention of Corruption Act was amended, Section 17A was introduced to make the government's previous approval a mandatory requirement before any probe can be begun into decisions or recommendations made by a public servant. This initial stage filter has been created even while sanction is necessary for prosecuting any public servant at the stage of the trial court taking cognisance of the charge sheet. A prior approval requirement for initiating an anti-corruption probe is not inherently desirable. In its 2014 judgment, the Court had observed that such provisions are destructive of the objective of the anti-corruption laws, block the truth from surfacing and sometimes result in a forewarning to those officials involved as soon as allegations arise against them. It may be necessary to have safeguards to filter out frivolous inquiries into the conduct of public servants making crucial and bona fide decisions, but it is equally in the interest of the public that these provisions do not become a shield for the unscrupulous.

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LIMITS OF IDENTITY: THE HINDU EDITORIAL ON FACILITATING PEACE IN MANIPUR

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

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September 15, 2023 12:20 am | Updated 12:20 am IST

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One of the most disconcerting features of the ongoing ethnic strife in Manipur remains the inability of civil society representatives to rise above their “ethnic” affiliations and work towards peace. This is exemplified by the acts of the Meira Paibi, an amorphous organisation of Meitei women, who have in the past mobilised against armed forces and police excesses, alcoholism, drug addiction and sexual violence in the State. During the conflict that has raged on since early May, however, the Meira Paibi has been working towards disrupting the operations of the Assam Rifles in their attempt to maintain peace, especially in the foothills. These areas, called “buffer zones”, were created to ensure that there is no further escalation of violence between arms-wielding people of the two ethnic communities, but there have been violent attacks with the armed forces unable to act on time because of disruptions, allegedly, by the Meira Paibi among others. Clearly, the situation has been brought to a boil by the looting of weapons by both Kuki-Zo and Meitei groups and their use in the strife. But the inability of the State government and its police and the Union government-deployed armed forces in maintaining peace has also been due to civil society groups supporting those engaging in violence.

Some Meira Paibi representatives had, in a press conference in New Delhi on Wednesday, claimed that they do not recognise the buffer zones, calling them “unconstitutional”. The presence of armed forces in peacekeeping is not an ideal solution in most circumstances. But with the ethnicisation of law enforcement, aided by a State government that seems to have lost its legitimacy of power across ethnic divides, leading to demands for a separate administration by Kuki-Zo representatives, the armed forces’ presence and the need for buffer zones to maintain a semblance of peace have become essential in Manipur. Civil society groups such as the Meira Paibi can rise above their narrow ethnic identities to press for justice for women affected in the conflict and thus build solidarity networks that will aid the process of reconciliation and peace-building. Sadly, that does not seem to be the case today. Civil society organisations have whipped up the frenzy of ethnic hatred, partially due to the recurring trauma from the violence, as much as cynical political representatives have. And this has meant that the cycle of violence has endured. History suggests that a breakthrough can only be achieved through non-partisan leadership and civic dialogue among civil society and political representatives. As things stand, for that to happen there needs to be a credible alternative to the current leadership in the State.

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MISPLACED MYSTERY: THE HINDU EDITORIAL ON THE SPECIAL SESSION OF PARLIAMENT, THE POLITICS

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

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September 16, 2023 12:20 am | Updated 08:52 am IST

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The Government appears eager to keep some enigma around the five-day special session of Parliament, set to begin from September 18. Opposition parties had a point when they complained that the Government did not consult them before calling the special session. As in the parliamentary bulletin issued on September 13, only the agenda for the opening day is known. The Government has listed the Bill that seeks to change the appointment process of the Chief Election Commissioner and Election Commissioners, which the Opposition is preparing to corner the Government on as it gives the ruling party excessive control over the appointment process. The Government also proposes holding a debate on 'Parliamentary Journey of 75-years starting from Samvidhan Sabha – Achievements, Experiences, Memories and Learnings', an intriguing topic. The listed debate could well be the farewell address to the present Parliament (circular) building which was designed by Sir Herbert Baker and Sir Edwin Lutyens, and inaugurated in January 1927 by Viceroy Lord Irwin as the seat of the Imperial Legislative Council. The new building, which is triangular-shaped, has been waiting to receive parliamentarians since May 28 when it was inaugurated by Prime Minister Narendra Modi. It was not used during the monsoon session held between July 20 and August 11. No official explanation has been forthcoming on why the session was not held there.

Viceroy Irwin had presented the circular building as an emblem of "permanence". The building will be retiring at 96 years, four years short of a century. For India's growing population, its Parliament needs to be bigger and, consequently, the building too. But democracy is not about buildings. Parliament, after all, is a place for the Opposition to have its say though the Government might have its way. The Bharatiya Janata Party has an absolute majority in the Lok Sabha and while it may not have similar numerical strength in the Rajya Sabha, it remains the single largest party; thanks to allies and sympathetic parties, no government Bill has been stalled here for want of a majority. Still, the Government evades parliamentary scrutiny and gives no priority to taking the Opposition into confidence. The Government insists that it is going by the book. A meeting of floor leaders of all parties is being convened on Sunday, just 31 hours before the session begins. There is no dialogue between the Opposition and the Government to enable the smooth functioning of the Parliament. Changes to Article 370 were before Parliament on August 5, 2019, without any notice or consultation. If the Opposition parties have needlessly speculated about the agenda and aired their concerns about the special session, the Government is partly responsible.

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IN DIVERSE INDIA, NAME CHANGE DEMANDS CONSENSUS

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September 16, 2023 12:16 am | Updated 09:15 am IST

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“The official name of the country is the Republic of India”. Photo: loc.gov

An official invitation sent out by Rashtrapati Bhavan in connection with the G-20 summit in New Delhi under India’s presidency which carried the nomenclature of the President of India as ‘President of Bharat’ set off a controversy. The controversy is symptomatic of the present-day political atmosphere, characterised by an intense distrust of each other, extreme and inexplicable revengefulness and heightened revanchism on the part of the power wielders, and widespread anxiety about the future of the country.

Editorial | India that is Bharat: On a name game

There has been no explanation from official spokesmen of the government for this sudden change. The abrupt change in a very formal official communication from the head of the state caught the nation unawares. Apologists of the powers that be came out with the proposition that the name of the country is interchangeable as Bharat (as is described in Article 1 of the Constitution); therefore, Bharat can be used. In this context, someone was heard saying that all that is required to change to Bharat is a resolution to that effect in Parliament. In fact, it was even suggested that the special session of Parliament next week would do just that. It is a bit surprising that some senior advocates of the Supreme Court of India too chimed in with their considered opinion — of course, in favour of the proposition highlighted above.

Before the whole issue of changing the name of the country and the manner in which it is being handled are considered, it is necessary to make it clear that Parliament has the absolute power to change the name of the country at any time by amending the Constitution. Article 368 of the Constitution empowers Parliament to amend any provision of the Constitution which includes the name of the country, as mentioned in Article 1. But the public has been left aghast by the general cacophony which has left them none the wiser as far as the issue is concerned.

So, let us examine the whole issue of the change of name of the country from a purely constitutional point of view. First, the invite that went out from Rashtrapati Bhavan. This invite used the nomenclature, “President of Bharat”. In fact, at the moment, constitutionally speaking, there is no President of Bharat in the country. Article 52 says that there shall be a President of India. This is the official nomenclature of the head of the state which cannot be changed into anything else unless Article 52 is amended suitably. Thus, it is quite obvious that the term

‘President of Bharat’ is not in conformity with Article 52 of the Constitution.

Article 1 says, “India, that is Bharat, shall be a Union of States”. These words by no means signify that the words ‘India’ and ‘Bharat’ are interchangeable and that ‘Bharat’ can be used in place of ‘India’ as the official name of the country. As a matter of fact, the word ‘Bharat’ is not used in any of the articles of the Constitution except in the Hindi version, which was published under the authority of the President under Article 394A.

If the intention of the Constitution makers was to use the word ‘Bharat’ interchangeably, they would have used it in some parts of the Constitution which is the authentic Constitution of India officially so described under Article 393. In this context, let us try to understand the true import of the words “India, that is Bharat...”, used in Article 1. The words ‘that is’ are clarificatory whose function is to explain or further clarify the preceding word ‘India’. Thus, it is interpreted that Article 1 would mean India that is known as Bharat shall be a Union of States. Article 1 in the Hindi translation of the Constitution says “Bharat means India”, which shows that Bharat is treated as the translation of India.

In other words the word ‘Bharat’ does not stand as an independent word in the original Constitution. It is to be used only in the Hindi translation of the Constitution. Further Article 394A(2) says “the translation of this Constitution…shall be construed to have the same meaning as the original thereof...”; this clause reinforces the point that the word Bharat is a translation of the word ‘India’, as used in the original Constitution, and India is the authentic name of the country until it is legally changed.

The use of ‘Bharat’ interchangeably with ‘India’ in official communication can create a great deal of confusion. The official name of the country is the Republic of India. This is the name used in all official communication sent to foreign countries and international bodies. Agreements and treaties entered into with foreign countries are in the name of the Republic of India and not republic of Bharat. If Bharat is used interchangeably, the foreign governments will be thrown into utter confusion. In some agreements with foreign governments or international bodies India will be shown as Republic of India and in some other, as republic of Bharat. A country can have only one official name. It can be either India or Bharat, not both.

A perusal of the debates of the Constituent Assembly shows that Article 1 in the draft Constitution was worded “India shall be a union of states”. The word Bharat was added later during the debate because of strong pressure from many Members to use Bharat instead of India. Many formulations were suggested by members such as H.V. Kamath, K.T. Shah, Seth Govind Das, and Shibban Lal Saxena. But B.R. Ambedkar added the words “that is Bharat” as a compromise. He never once said that ‘Bharat’ can be used interchangeably in the original Constitution.

The change of name of a country cannot be and should not be done as the agenda of a political party. In a diverse country like India there needs to be a consensus on this. People in every nook and corner of the country must be able to emotionally connect with the name. Otherwise it will create a sense of alienation among some section or the other. The weird idea of liberation from India’s colonial past should lead us to demolish all symbols of colonialism such as Rashtrapati Bhavan, Parliament House, the Assembly building, and completely change the whole administrative structure that is prevalent as well as many other things. The entire railway system in India is also a symbol of the colonial past.

Does this newfound anti-colonial exuberance sit well with the idea of ‘Vasudhaiva Kutumbakam’, that was the motto of the G-20 under India’s presidency?

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

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CRAFTING A NEW CHAPTER IN PARLIAMENTARY CONDUCT

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September 18, 2023 12:16 am | Updated 09:12 am IST

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The new (left) and old buildings of Parliament | Photo Credit: PTI

As Members of Parliament troop into brand-new chambers of Parliament on Tuesday for the unexpectedly-convened special session, one of the possibilities in their minds must be the prospects for disruption. That practice, sadly, is often par for the course in India's Parliament, many of whose members (and not only in the Opposition) appear to believe that the best way to show the strength of their feelings is to disrupt the lawmaking rather than debate the law. Last session, the Opposition parties united to stall both Houses almost every single day. While that was extreme, there has not been a single session in recent years in which at least some days were not lost to deliberate disruption.

It was not always this way. Indian politicians were initially proud of the parliamentary system they had adopted upon Independence, patterned as it was on Britain's Westminster model. India's nationalists had been determined to enjoy the democracy their colonial rulers had long denied them, and had convinced themselves the British system was the best, precisely since they had been excluded from enjoying its benefits. When a future British Prime Minister, Clement Attlee, travelled to India as part of a constitutional commission and argued the merits of a presidential system over a parliamentary one, his Indian interlocutors reacted with horror. "It was as if," Attlee recalled, "I had offered them margarine instead of butter."

Many of India's first generation of parliamentarians — several of whom had been educated in England and watched British parliamentary traditions with admiration — revelled in the authenticity of their ways. Indian MPs still thump their desks in approbation, rather than applauding by clapping their hands. When Bills are put to a vote, an affirmative call is still usually "aye", rather than "yes" (though "hanh" is gaining ground on the Treasury benches these days). An Anglophile Communist MP, Professor Hirendranath Mukherjee, boasted in the 1950s that a visiting British Prime Minister, Anthony Eden, had commented to him that the Indian Parliament was in every respect like the British one. Even to a Communist, that was a compliment to be proud of.

But seven-and-a-half decades of Independence have wrought significant change, as exposure to British practices has faded and India's natural boisterousness has reasserted itself. Some of the State Assemblies have already witnessed scenes of furniture overthrown, microphones

ripped out and slippers flung by unruly legislators, not to mention fisticuffs and garments torn in scuffles among politicians. While things have not yet come to such a pass in the national legislature, the code of conduct that is imparted to all newly-elected MPs — including injunctions against speaking out of turn, shouting slogans, waving placards and marching into the well of the house — is routinely breached. Pepper spray was once released in the well by a protesting MP, resulting in the hospitalisation of some MPs and the then Speaker experiencing discomfort. Equally striking is the impunity with which lawmakers flout the rules they are elected to uphold. On several occasions now, MPs in the Upper and Lower Houses have been suspended from membership for such transgressions as charging up to the presiding officer's desk, wrenching his microphone and tearing up his papers — only to be quietly reinstated after a few months and some muted apologies.

Perhaps this makes sense, out of a desire to allow the Opposition its space in a system where party-line voting, made obligatory by the anti-defection law, determines almost all legislative outcomes. But in the process, standards have been allowed to slide, with adjournments being preferred to expulsions. The result is a curiously Indian institution, where standards of behaviour prevail that would not be tolerated in most other parliamentary systems.

But can India's Parliament go on like this? Many worry that such conduct has so thoroughly discredited the legislature in the eyes of the public that the credibility of the institution is beyond redemption. This would be one more nail in the coffin of a democratic system that is already under severe assault from an overweening government, media intimidation, the hollowing out of autonomous institutions, pressures by investigative agencies on political opponents and the government's flagrant disregard for parliamentary conventions. Currently, all major parliamentary committees dealing with sensitive issues are chaired by MPs of the ruling party or its allies, in disregard of the practice whereby, for instance, the External Affairs Committee was always chaired by an Opposition MP, to show that the nation was of one mind on foreign policy.

Perhaps the answer lies in returning for inspiration to the source — the Houses of Westminster. There are two British parliamentary procedures that were curiously never adopted by India — which, if brought into our practices, could remove any incentive for disruption.

The first is to allow the Opposition a day a week to set the agenda, since disruptions are always sought to be justified as required to force the government to debate an issue it does not want to. In Britain, "Opposition Day" permits Opposition parties to select specific policy areas or issues they want to bring to the floor of the House for debate. These debates allow the Opposition to focus on matters of political significance that the government would rather sweep under the carpet, and they provide Opposition parties with the opportunity to draw attention to issues they believe are important, criticise government policies, and propose alternatives. The number of Opposition Days in a parliamentary session is typically determined by the government and Opposition parties through negotiation and agreement. This arrangement ensures that the Opposition has a designated platform to express its views and priorities within the parliamentary schedule. It could be adopted as part of a grand bargain under which the Opposition, in turn, foreswears any resort to disruption.

A second practice is especially worth emulating in our country, where the Prime Minister notoriously prefers monologues to answering questions and does not even answer the questions addressed to him in the daily Question Hour, leaving that task to a Minister of State in his office. This is Prime Minister's Question Time (PMQs), a significant and widely watched parliamentary event in the United Kingdom, where MPs have the opportunity to question the Prime Minister about various issues. PMQs take place every Wednesday when the House of Commons is in session, usually at noon, and typically lasts for about 30 minutes, though the exact duration can vary. The order of questioning alternates between the Leader of the Opposition and backbench

MPs from both government and Opposition benches. The Leader of the Opposition starts by asking several short questions, followed by supplementaries, and then other MPs have a go. Each question is relatively short, and the Prime Minister responds in kind. PMQs are known for spirited exchanges and are immensely popular television viewing in Britain. Both are key aspects of the British parliamentary system's tradition of executive accountability. While Opposition Days and PMQs can be raucous and often confrontational affairs, sometimes characterised by political theatre, they serve the important function of allowing MPs to scrutinise the Prime Minister and the government, are central to the U.K.'s democratic process and show parliamentary democracy in action.

Editorial | Symbols and substance: on the inauguration of the new Parliament building and beyond

Finally, the Speaker can change his current habit of rejecting every single adjournment motion moved by an Opposition MP; clubbing all proposed amendments to Bills into one and rejecting them by voice vote without discussion; and refusing to even notice requests for recording dissent through "division". These parliamentary techniques are essential for Opposition members to feel they are valued members of an institution rather than irrelevances who can always be disregarded and outvoted. If the government and Opposition can come together on such basic matters, Parliament — and our democracy — can still be saved.

***Shashi Tharoor is the third-term Lok Sabha MP for Thiruvananthapuram, representing the Congress party, and is the longest-serving Member of Parliament in the history of that constituency. He is the Sahitya Akademi Award-winning author of 25 books and Chairman of the All-India Professionals' Congress. He is also the co-author of the new book,* The Less You Preach the More You Learn: Aphorisms for our Age**

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THE CAUVERY WATER MANAGEMENT AUTHORITY SHOULD ACT

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

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At the Krishnaraja Sagar, in 2016 | Photo Credit: FILE PHOTO: V. SREENIVASA MURTHY

With the pace and output of the southwest monsoon this year casting a shadow over the catchment areas of the Cauvery river in Karnataka and Kerala, the elusive distress-sharing formula is back in focus. Recent submissions by Tamil Nadu and Karnataka as well as the deposition of the Cauvery Water Management Authority (CWMA) before the Supreme Court of India only reinforce the need for an early formulation that is acceptable to all.

The notion of a distress-sharing formula has been in the air ever since the Cauvery Water Disputes Tribunal (CWDT) gave its interim order in June 1991. A serious attempt to have one was made in 2002-03 when the southwest monsoon yielded scant rain (compared to long-term data) over a three-year block, between 2001-02 and 2003-04, with poor inflows to four reservoirs — Krishnaraja Sagar (KRS), Kabini, Hemavathy and Harangi, all in upper-riparian Karnataka. The state of Mettur dam in Tamil Nadu, the lower riparian State, needed no elaboration.

There is nothing much in the final order of the Tribunal in 2007 and the judgment of the Supreme Court in 2018, which the players concerned could look to for distress sharing. The judicial bodies had referred to the principle of pro-rata sharing in times of distress. The Tribunal had suggested that in the event of there being two consecutive bad years of rain, the monthly schedule of water release be relaxed and all the reservoirs in the entire basin operated in an integrated manner “to minimise any harsh effect”. But, in the discourse now, neither of the parties to the dispute nor the Authority has expressed anything against the concept of distress sharing. The divergence appears to be over what the elements of the proposed formula should be. Tamil Nadu takes into account the deficit in inflows to the four Karnataka reservoirs vis-à-vis the average flows in the last 30 years, and the rainfall pattern in three groups of the Cauvery catchment (the catchment of the KRS and Kabini, the catchment upstream of Biligundulu on the inter-State border, and the catchment downstream of Biligundulu).

Karnataka, which is not for considering only the deficit in inflows into its reservoirs, has been maintaining that the overall distress situation cannot be calculated till the end of January. It has said that the outcome of the northeast monsoon (October-December) should also be taken into account with that of the southwest monsoon (June-September). As an upper riparian State that is dependent on the southwest monsoon for irrigation, drinking water and more, Karnataka is

well within its rights to be concerned about meeting its requirements for the next eight-odd months, even though it has the propensity to fix the “rules of the game” for water release unilaterally. It had even informed the Court of its difficulties in releasing water in view of a “severe drought situation” in the Cauvery and Krishna basins.

The CWMA, in its meeting on August 29, deliberated on many factors that included the shortfall in inflows and rainfall, the monsoon forecast over the next fortnight (till September 12), and inflows and outflows of four other reservoirs in the Cauvery basin. — an approach that has not been to the satisfaction of both States. While directing Karnataka to ensure the realisation of 5,000 cubic feet per second (cusecs) for 15 days from August 29, the CWMA recorded that during June 1 to August 27, the four Karnataka reservoirs had suffered a shortfall of 51.22% in their inflows, with the upper catchment of the Cauvery basin having had a more negative deficit in rainfall. The CWMA pointed out that the shortfall for Biligundulu, as compared to the stipulated flows in a normal year, was 62.4%. The Authority, which held an emergency meeting on September 18, endorsed the Cauvery Water Regulation Committee (CWRC)‘s direction given on September 12 to Karnataka to continue providing 5,000 cusecs for another 15 days (September 13 to 27).

Tamil Nadu, which has worked out what is due to it this year, is waiting for the Supreme Court’s intervention to get back “its quota” of water for the one-and-a-half months (half of August and the whole of September), even as the case is likely to be heard by the Court on September 21. Regardless of the outcome, the State should pursue the idea of judicious use of water.

The positions taken by Karnataka and Tamil Nadu may appear to be difficult to reconcile but this should not deter the Authority — or, if required, the Union government — from trying to find a formula. Such an approach could and should have been used by the Authority after its inception in June 2018. Unfortunately, nothing much was done in these five years. The opportunity now should not be lost.

The history of the Cauvery dispute shows that it is people at the helm of affairs who have not risen to the occasion to resolve the problem. Instead of giant steps being taken to solve the issue, settling for status quo has been the norm. Of course, political considerations have been a factor. A silver lining when it comes to the composition of the Authority is that the body is populated with officials and technical experts, who should not have any problem in coming to a distress-sharing formula in a rational and objective manner. The CWMA may not have shown its mettle so far, but it should now try and make a fresh beginning. To begin with, the Authority along with its assisting body, the CWRC, should make the proceedings of all its meetings held so far available to the public on a website. Putting out all the facts in the public domain will help the CWMA dispel misconceptions in both States about this issue given that the Cauvery has always been an emotive subject.

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

As the proceedings of the Parliament shifts to the new building on Tuesday, the Prime Minister announced the new name of the old parliament building which will be called “Samvidhan Sadan" (Constitution House). The old Parliament Building which was designed by British architects Sir Edwin Lutyens and Herbert Baker and was completed in 1927 witnessed some of the great moments in Indian history like the passing of India's constitution.

"I appeal to you, and I hope you will consider it after deliberation. Now that we are going there (the new parliament building), the glory of this house should never decline. We shouldn't just call it the 'old parliament'. I request, if both of you permit, that this building should be known as 'Samvidhan Sadan' so that it always serves as an inspiration for us. When we call it 'Samvidhan Sadan', the memories of those great people who once sat here in the Constituent Assembly get linked to it. We shouldn't let go of this opportunity to offer this gift to the coming generations," NDTV quoted PM Modi as saying.

PM Modi paid his tribute to “every brick" of the old Parliament building and said the members of Parliament will enter the new Parliament with new hope and confidence. The sources have revealed that the old Parliament building will be conserved as an archeological marvel of India.

PM Modi touched on several topics during his address on Monday from the Lok Sabha elections, and G20 summit to the success of India's lunar mission to Chandrayaan-3. PM Modi also remembered the first Prime Minister of India Jawaharlal Nehru and said, "Today when we are entering the new Parliament building, when the 'grih pravesh' of Parliamentary democracy is taking place, the witness to the first rays of Independence and that which will inspire generations to come - the holy Sengol - that which was touched by India's first Prime Minister Pt Nehru...That is why, this Sengol connects us to a very important past..."

"Chandrayaan-3's skyrocketing success fills every countryman with pride. Under India's presidency, the extraordinary organizing of G20 became an occasion to make unique achievements like getting the global desired impact. In the light of this, the symbol of modern India and ancient democracy - proceedings in the new Parliament building begins today," PM Modi added.

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PLAYING TO THE GALLERY: ON INCIDENTS THAT HAVE LOWERED THE MAJESTY OF THE INSTITUTION OF PARLIAMENT

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

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September 25, 2023 12:10 am | Updated 09:25 am IST

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Prime Minister Narendra Modi had called for a new chapter in parliamentary history, and exhorted members to “forget all past bitterness”, as they moved into a shiny new building last week. “Whatever we are going to do in this new Parliament building, it should be an inspiration to every citizen in the country,” he had said. Fittingly for a new beginning, Mr. Modi’s government brought a Bill for reserving 33% seats for women in Parliament and State Assemblies. The proposal found near unanimous acceptance across the political spectrum, though some parties were concerned about the timeline for its implementation, and some wanted a carve out for Other Backward Classes. But this show of unity and purpose was soon overshadowed by incidents that lowered the majesty of the institution of parliament. A Bharatiya Janata Party (BJP) Member of Parliament hurled toxic communal slurs at a fellow MP from the Muslim community even as some other senior leaders of the ruling party smiled on in the Lok Sabha during a discussion, of all things on the success of India’s Chandrayaan mission, hardly a partisan issue. In the Rajya Sabha, visitors in the gallery reportedly raised political slogans in support of the government during the discussion on the women’s reservation Bill, a singularly inappropriate method of credit appropriation.

The conduct of the BJP MP was condemnable but what compounds it is the party’s overall approach that followed. Union Defence Minister Rajnath Singh who was present during the outrage did apologise to the House for the remarks. But soon after that, the party fielded several spokespersons to explain away the episode, and they accused the one who was at the receiving end of provoking the incident. An equivalence has also been sought between communal abuse against a fellow member and remarks allegedly made by some Opposition members about faith and the existence of god. The Lok Sabha Speaker who has in the past suspended Opposition members on charges of misconduct is expected to take a more serious view of this incident, and set out an example, making it clear that the House cannot condone communal slurs against any one, and certainly not a member. Several Opposition leaders have written to Rajya Sabha Chairman regarding sloganeering from the visitor’s gallery. That episode too calls for exemplary punitive and preventive action. The new building must foster healthy dialogue among members, and between the institution and the people.

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SIMULTANEOUS POLLS — BUT ONLY IN A PRESIDENTIAL SYSTEM

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‘The issue has been by committees and the conclusion was that it would be exceedingly difficult to implement it without substantial changes to the Constitution’ | Photo Credit: RITU RAJ KONWAR

A fresh attempt is being made by the Narendra Modi government to veer towards one nation-one poll, which would mean that all State elections are held simultaneously with the general election to the Lok Sabha. In order to kickstart this process, one would need to curtail the term of the Assemblies in several States, whose terms have not ended at the time the Lok Sabha election is to take place.

There is a deeper problem in implementing one nation-one poll. In the present parliamentary system of India’s democracy, at both the central and State levels, since the survival of the government is dependent on its enjoying the confidence of the majority of the house (majorities can change mid-term because of splits in parties, defections or even if some Members of Parliament/Members of the Legislative Assemblies from the ruling party refusing to support the government) the government can fall mid-term thus leading to mid-term elections. However, in one nation-one poll you cannot have mid-term elections if the rest of the States and the Centre have to go to the polls together. Therefore, the only option would be to either continue with a minority government headed by a Chief Minister/Prime Minister who has lost the confidence of the House or to impose President’s rule for the rest of the term. In my view, both these options would be undemocratic as it would mean that the government rules the Centre/States without enjoying the confidence of the majority of the House. This will defeat the essence of democracy in a parliamentary system.

Therefore, in my view, one nation-one poll is possible only if we switch to a presidential form of government where the government is run by a directly elected President/Governor who does not need to enjoy the confidence of the majority of the House. This happens in countries such as the United States. In those countries, there is also a clear line of succession laid down for the President/Governor. If the President dies mid-term, the Vice-President and thereafter the Speaker becomes the President for the remainder of the term. Such a presidential system can have one nation-one poll without compromising the essence of a democracy.

The issue of one nation-one poll has been examined by the Law Commission and some

parliamentary committees as well and the conclusion was that it would be exceedingly difficult to implement it without substantial changes to the Constitution. There were some suggestions that one nation-one poll can happen even in a parliamentary democracy by ensuring that when a government loses the confidence of the majority of the House by a no-confidence motion, such a no-confidence motion must be accompanied with a confidence motion in an alternative government. This will ensure that some government or the other continues for the remainder of the term. However, the problem here is that the legislators may not have confidence in an alternative government if they feel that a substantial number of Members of the House have lost the confidence of the people. Therefore, the will of the people about the government can only be determined by fresh elections.

If one provides that a no-confidence motion has to be accompanied by a confidence motion in an alternate government, we may have a situation of a government continuing in office which effectively has lost the confidence of the majority of the members. It will not be able to pass legislation or even money Bills and finance Bills, without which it will become difficult to run the government. These suggestions are impractical if we continue with parliamentary democracy in a one nation-one poll system.

The provisions of the Constitution that would need to be amended to switch to an essentially presidential system would be as follows: Part V – The Union – Chapter I – Executive – Articles 52-78 and Chapter III – Legislative Powers of the President; Part VI – The States – Chapter II – The Executive – Articles 153-167 and Chapter IV – Legislative Power of the Governor

Introduction of the presidential system would also require amendments to include several new provisions within the Constitution regarding the powers of the President, the Governors, the Council of Ministers, and provisions relating to the line of succession.

Some people feel that parliamentary democracy in India is part of the basic structure of the Constitution. Though the Constitution-makers had discussed the issue of a parliamentary versus presidential form of government at some length in the Constituent Assembly, they, for good reason, adopted the parliamentary system in a diverse country such as India. However, in my view, that would still not make the parliamentary system part of the basic structure. Democracy is certainly a part of the basic structure, and is consistent with the presidential form. One cannot say that the American system is not democratic.

Some people also feel that the presidential system would be antithetical to a federal country. But that is not the case either. The United States is a federal country, with its States enjoying vast powers even within a presidential form. The devolution of powers to the States or to the lower tiers of government such as municipalities, and panchayats will not depend on whether the system is presidential or parliamentary. In a presidential system, the power of the government is concentrated in one directly elected person whether he is the President of the country or the Governor of the State rather than being in the hands of multiple legislators. This is probably a reason why the Constitution-framers chose a parliamentary rather than a presidential form since they did not want executive power to be in the hands of one person alone, especially in a diverse country such as India. However, that to my mind is not part of the basic structure.

Though the present government has appointed another committee headed by a former President of India and hand-picked members to decide on this issue, it does not enjoy a two-thirds majority in either House so as to push through these amendments without the support of a substantial section of the Opposition. The Opposition, i.e., the INDIA alliance, has indicated that it does not support this move. Thus, this fresh attempt to switch to one nation-one poll appears to me to be a non-starter.

In my view, it may have been floated at this juncture only to give the government some leeway to postpone elections in five States which are due to go to the polls this year end. The ruling party is staring at defeat in almost all these States and do not want to go to the general election on the back of a defeat. However, even postponing these elections in five states till April-May 2024 would involve constitutional issues. For instance, Article 172(1) states that a Legislative Assembly of a state, unless sooner dissolved, 'shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly'.

Perhaps what the ruling party may be wanting is to impose President's rule in these five States by exercising powers under Article 356 of the Constitution and then get a pliant Election Commission of India to toe the government's line to postpone the Assembly elections until the general election to the Lok Sabha. The question is, will that not fall foul of the Constitution and the laws? In my view, it will. Though the Supreme Court of India has held that the Election Commission of India has a leeway of up to six months to hold the elections after the dissolution of the Assembly (in Re Special Reference Case 1 of 2002), the justification of using that leeway merely because a committee is again considering the idea of one nation-one poll would be a mala fide decision, and thus liable to be struck down by the courts.

Prashant Bhushan is a public interest advocate at the Supreme Court of India

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EXPERTISE OVER POLITICS: ON THE CAUVERY WATER DISPUTE

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

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In declining to interfere with the order of the Cauvery Water Management Authority (CWMA), directing Karnataka to release 5,000 cubic feet of water per second (cusecs) to Tamil Nadu until September 27, the Supreme Court has rightly chosen to defer to the wisdom of an expert body that is better placed to apportion the available water in a rainfall deficit year. Karnataka had approached the apex court against the order, contending that it was suffering from a shortfall of over 53% in inflows to its reservoirs this year, following a weak south-west monsoon, and was not in a position to release 5,000 cusecs for 15 more days. To its credit, the upper riparian State has been complying with the CWMA's order amid pressure and protests from some political parties and organisations. Earlier, Tamil Nadu had approached the Court in mid-August to seek directions for water release from Karnataka's reservoirs so that the quantum stipulated for it for the second half of August and whole of September could be realised. The Court had then sought a report from the CWMA, which has spelt out the extent of the distress this year. The 15-day period for which the current CWMA order is applicable ends on September 27, and the Authority's assisting body, the Cauvery Water Regulation Committee (CWRC) is scheduled to meet on September 26 to consider the situation afresh. The dispute has surfaced after a few years, once again highlighting the fact that the parties need a regular formula to share the shortfall and distress in years when the monsoon fails.

In years of abundance, there is little difficulty in Karnataka releasing the water in compliance with the final award of the Cauvery Water Disputes Tribunal, as modified by the Supreme Court in 2018. It is well-known that much of this release is the natural downstream flow of water during heavy rainfall from brimming reservoirs. It is only during deficit years that the States involved feel that the Court will pass favourable orders even if the CWMA does not. This kind of yearly adjudication and seasonal litigation should not become the norm. The CWMA should utilise the opportunity to come up with a permanent formula on how to assess deficit in a given year. Even on the manner of assessment of deficit, the two States have divergent views. It is now up to the CWMA and the CWRC in gathering data on rainfall, inflows and storage, to evolve an acceptable formula to apportion the shortfall in an equitable way. It is inevitable that neither State will be satisfied with the quantum of release ordered by the CWMA, but it is at this point that politics should yield to domain expertise.

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