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Index

Endgame: The Hindu Editorial on the tripartite agreement between the pro-talks faction of the United Liberation Front of Asom, Union government and the Assam government 2
Raj Bhavan needs radical reforms 4
ULFA pact: an accord of safeguards? 7
I-T searches, a form of extra-constitutional power 10
Shielding SEBI: On Supreme Court's ruling and SEBI probe 13
Unlawful remission: The Hindu Editorial on the Bilkis Bano case 15
Justice for Bilkis Bano, questions on remission 17
"Big shock to those who run political parties through dynasties": CM Shinde takes swipe at Uddhav, Congress after Sena verdict 20
The Indian Parliament, a promise spurned 22
Express View on Bilkis Bano verdict: Doing the right thing 25
Union Minister Rao Inderjit Singh launches the MPLADS e-SAKSHI Mobile Application for the Revised Fund Flow Procedure under MPLAD Scheme 26
The idea of one nation, one election is against federalism 31
Vice-President to inaugurate 'Hamara Samvidhan, Hamara Samman' campaign tomorrow to commemorate the 75th Year of India as Republic 34
Express View on One Nation, One Election panel: First, listen 37
How Basic Structure doctrine became one of the strongest safeguards for Indian democracy 38
Limits and borders: On the territorial jurisdiction of the Border Security Force 40
Reflecting on Bilkis Bano's resilient pursuit of justice 42

Source : www.thehindu.com Date : 2024-01-01

ENDGAME: THE HINDU EDITORIAL ON THE TRIPARTITE AGREEMENT BETWEEN THE PRO-TALKS FACTION OF THE UNITED LIBERATION FRONT OF ASOM, UNION GOVERNMENT AND THE ASSAM GOVERNMENT

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

January 01, 2024 12:15 am | Updated 12:15 am IST

The signing of a tripartite agreement, in New Delhi, between the pro-talks faction of the United Liberation Front of Asom, the Union government and the Assam State government marks the end of a process that began in 2009. Nearly 15 years ago, the “chairman” of ULFA, Arabinda Rajkhowa, who went on to become the face of the pro-talks faction, was “arrested”, even as other key leaders of the insurgent outfit surrendered. By 2011, following a unilateral ceasefire by the group, the ULFA’s pro-talks faction had already signed a “suspension of operations” agreement, with several cadres staying put at special camps called “Nabanirman Kendras”, putting an end to the then 32-year-old insurgency. A much-delayed talks process finally concluded last week, resulting in the current tripartite memorandum of settlement, enabling the faction’s cadres to agree to surrender arms and vacate their camps. The “commander-in-chief” of the outfit, Paresh Baruah, had opposed the dialogue process in 2009, insisting that the “sovereignty issue” be a part of it, and since then his faction, the ULFA (Independent) has remained hostile to the peace process. The ULFA(I) is now a much weakened outfit, with Baruah believed to be in north-east Myanmar. The ULFA has long lost its potency as an insurgent force from its heydays in the 1990s, when it managed to farm the discontent that persisted in rural Assam even after the Assam Accord of 1985. Since then, the organisation has lost popular support, especially among sections of Assam’s peasantry, due to its violent tactics targeting civilians such as migrant workers and the poor, relying on extortion, besides espousing a flawed chauvinist ideology that misconstrued the nature of the Indian state, which yielded diminishing returns.

Military operations by Bhutan in the early 2000s broke its insurgent might and, later, the Sheikh Hasina-led Awami League government in Bangladesh handed over most of the outfit’s leaders. Since then, the pro-talks faction gave up the demand for sovereignty and revised its charter of demands to accommodate the interests of the “indigenous people” of Assam, while seeking an honourable exit. The delay in the conclusion of talks meant that some cadres had left the camps over the years, with a few joining the ULFA(I), but reports indicate that recruits to the Baruah-led organisation have fallen drastically in recent years. The threat of militancy from the remnants of

the ULFA might have subsided dramatically over the years in Assam, but much needs to be done to raise the livelihood standards of the peasantry in the north-eastern State. Persistent poverty has been a key reason for mobilisation on a narrow ethnic basis, a radical version of which has been espoused by organisations such as ULFA.

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BACK TO TOP

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Source : www.thehindu.com Date : 2024-01-03

RAJ BHAVAN NEEDS RADICAL REFORMS

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

January 03, 2024 12:15 am | Updated 01:20 am IST

SFI workers put up a banner against Kerala Governor Arif Mohammed Khan in front of the Kerala University headquarters at Palayam, in Thiruvananthapuram. | Photo Credit: The Hindu

The Governor of Kerala has been in the news for the wrong reasons. During his recent visit to the Calicut University campus, he instructed the police to remove posters put up against him. He termed the activists of the Students' Federation of India "criminals" and accused the Chief Minister of "sponsoring" them. After his visit, in a clear breach of protocol, he toured Kozhikode without any previous announcement. As such episodes are becoming more common, it is time to think about the behaviour of Governors in Opposition-ruled States and to understand the legal consequences of such aberrations.

The Constitution cannot be expected to deal with the individual behaviour of public functionaries; it only talks of the functions, powers, and duties of Governors. However, the notion of constitutional morality should govern Governors in their public conduct. In *NCT of Delhi v. Union of India* (2018), a Constitution Bench of the Supreme Court emphasised the need to identify the "moral values of the Constitution" based on a notion of "constitutional culture". It said that the "constitutional morality places responsibilities and duties on individuals who occupy constitutional institutions and offices". Even while acting as Chancellor, Mr. Khan continues to be Governor. Whether his conduct reflects constitutional morality is an open question.

Article 361 of the Constitution provides only a limited and conditional immunity for the Governors. It says that Governors shall not be answerable to any court for the exercise and performance of the powers and duties of their office or for any act done or purported to be done by them in their official capacity. This does not mean that Governors are not liable for their misbehaviour unconnected with their official duty. In *Rameshwar Prasad v. Union of India* (2006), after finding that the Governor abused power in recommending Presidential rule in Bihar, the Supreme Court said that the motivated and whimsical conduct of the Governor is amenable to judicial review. Yet, the question of whether Governors can claim immunity for extra-constitutional gestures and utterances was not a matter in issue in Rameshwar Prasad. However, the Court said that "right persons" should be chosen as Governors for maintaining "the sanctity of the post".

Editorial | Unheeded advice: On the conduct of Governors

Questions relating to disparaging comments by public functionaries came up for consideration before the Supreme Court in *Kaushal Kishor v. State of Uttar Pradesh* (2023). The Court said

that the freedom of expression of public functionaries could not be curtailed other than by way of the “reasonable restrictions”, as permitted by Article 19(2) of the Constitution. In the context of ministers, Justice B.V. Nagarathna said that if the statement by the public functionary is not consistent with the views of the government, it is attributable to the minister personally and they can be proceeded against. While the majority opinion varied from Justice Nagarathna’s view on the method of enforcement of fundamental rights against non-state actors, the personal liability of public functionaries on matters unconnected with their public duty was not a topic of disagreement. To illustrate, if a crime is committed by a public functionary, there is no statutory or constitutional immunity for them. Offences such as defamation could be committed by a public functionary as well, when the act is unconnected with or is in apparent conflict with their official duty.

The Sarkaria Commission Report (1988) lamented that “some Governors have failed to display the qualities of impartiality and sagacity expected of them”. It added that “many Governors, looking forward to further office under the Union or [an] active role in politics after their tenure came to regard themselves as agents of the Union”. Since then, the situation has only worsened. The Commission’s recommendation that the “(Governor) should be a detached figure and not too intimately connected with the local politics of the State” remains wishful thinking.

The Justice M.M. Punchhi Commission report (2010) said that “to be able to discharge the constitutional obligations fairly and impartially, the Governor should not be burdened with positions and powers which are not envisaged by the Constitution.” It said that conferring statutory power on Governors by posting them as chancellors of the universities will have the potential to expose Raj Bhavan to “controversies or public criticism”. In Kerala, the State Assembly passed a Bill to abolish the Governor’s chancellorship. The Governor did not give assent to it and referred the Bill, along with others, to the President. This happened after he sat on the Bills for a long time and after the government moved the Supreme Court praying for gubernatorial assent. It was in this context that he visited the University as Chancellor, as against the will of the Assembly. This action lacked democratic legitimacy.

Future regimes at the Centre will have to consider amending Article 155 of the Constitution related to appointment of Governors by ensuring consultation with the Chief Minister, as suggested by the Sarkaria report. An independent body for selecting the Governor with a reasonably significant role for the Chief Justice of India also might improve the quality of the selection process. Also, there needs a legal prohibition against further rehabilitation of Governors in any official capacity. Raj Bhavans require systemic changes.

Kaleeswaram Raj is a lawyer at the Supreme Court of India

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Source : www.thehindu.com Date : 2024-01-04

ULFA PACT: AN ACCORD OF SAFEGUARDS?

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

January 04, 2024 01:37 am | Updated 01:38 am IST

United Liberation Front of Asom chairman Arabinda Rajkhowa arrives at Lokpriya Gopinath Bordoloi International Airport in Guwahati on December 31, 2023 after the signing of a peace accord between ULFA and the central and Assam governments in New Delhi. | Photo Credit: PTI

Can a peace pact with a faction of an extremist organisation do what six years of agitation to drive out ‘Bangladeshis’ and a follow-up exercise to update the National Register of Citizens (NRC) could not? Assam Chief Minister Himanta Biswa Sarma believes it can while conveying a narrowing gap between the Assamese and Bengali communities through a formula to determine who qualifies to be labelled indigenous.

On December 29, 2023, the pro-talks faction of the United Liberation Front of Asom (ULFA) signed a tripartite peace deal with the Centre and the Assam government. Unlike similar pacts with other Assam-based outfits, the formal agreement with the ULFA faction did not signal the end of extremism in Assam. This is because the hardline ULFA (Independent) faction headed by Paresh Baruah continues to wage war against the “Indian occupational forces” from its hideouts in Myanmar.

The Chief Minister, however, has claimed the accord with the 1979-born ULFA has paved the way to ensure legislative and land rights for the Assamese people. He said the pact has two major clauses – a commitment to following the principles applied for the 2023 delimitation exercise for future delimitation exercises in Assam and checking demographic changes by preventing people of one constituency from being registered as voters in another.

Opposition parties in Assam cried foul after the Election Commission (EC) published the final delimitation notification. The poll panel kept intact the number of Assembly and Lok Sabha constituencies at 126 and 14 while renaming one parliamentary and 19 Assembly seats. Most of the constituencies were reshaped too – Muslim areas from some mixed-population constituencies were attached to Muslim-dominated constituencies and non-Muslim areas were sliced off Muslim-heavy constituencies apparently to consolidate the voting strength of non-Muslims in certain constituencies. The number of reserved seats was also increased. The exercise was panned for aiming to reduce the representation of Bengali-origin Muslims in the Assembly. Muslims, often vilified as Bangladeshis, constitute more than 34% of Assam’s total population and have been a deciding factor in at least 35 Assembly seats.

Editorial | Endgame: On the tripartite agreement between the pro-talks faction of the United Liberation Front of Asom, Union government and the Assam government

Soon after the presidential assent to the delimitation notification on August 16, 2023, Mr. Sarma said: “Assam should not be taken over by unfamiliar persons. We have thus worked religiously to protect *jati* (community), *mati* (land), and *bheti* (foundation) to retain the political power in the hands of our people.”

Three days after the signing of the pact with the pro-talks ULFA group headed by Arabinda Rajkhowa, the Chief Minister thanked the EC for “preserving the rights of the indigenous people in the first phase” and the ULFA for solidifying the safeguards with its political demands in the “second phase”, indicating both toed the government’s line.

Mr. Sarma said while the delimitation ensured the representation of the indigenous communities in at least 106 seats — a minimum of 96 in the Assamese-dominated Brahmaputra Valley and eight in the Bengali-majority Barak Valley — of Assam’s 126 Assembly seats, the ULFA accord would make only the communities inhabiting Assam for 100, 200, or 300 years eligible for representation for at least 40 more years. Referring to the Assam Accord of 1985, which prescribes March 24, 1971, as the cut-off date for determining citizens, he said it was logical to move away from such dates and consider people living in Assam for at least a century as Assamese. “Let us not be narrow and consider all such communities as indigenous,” he said.

Also read | Peace accord ‘shameful’, political settlement not possible when goals, ideals given up: ULFA(I)

Assam’s political history has been marked by conflicts with Bengalis over culture and language. Barring Barak Valley, Bengali Hindus first came to Assam with the British in the mid-1800s primarily for clerical jobs and petty trades while the first set of Bengali Muslims settled for farming in the 1890s. But while the sizeable Bengali Hindus are considered the BJP’s major vote bank, the Bengali Muslims are not because of the perception that a majority of them crossed over during the Bangladesh Liberation War in 1971 and thereafter for greener pastures. The Chief Minister’s formula for determining indigeneity was in keeping with the BJP’s blueprint for consolidating the votes of the non-Muslims and polarising the Bengali Muslims, seen as loyal to Congress and the All India United Democratic Front, further.

Among the other safeguards sought in the ULFA accord, the Chief Minister underlined the demarcation of protected belts and blocks for general people on the lines of the British-era tribal blocks and belts where land rights are reserved for certain indigenous communities. Many tribal blocks and belts were allegedly taken over by “doubtful citizens” decades ago. He further highlighted the clause for reserving land within a 5 km radius of temples, *namghars* (prayer halls), and *satras* (monasteries) for the Assamese. Alleged encroachment of lands belonging to these religious institutions by “Bangladeshis” has been a major issue of the BJP.

The Chief Minister said implementing the ULFA accord was a matter of coming out with the necessary Bills. But with the Lok Sabha polls a few months away, he made it more than apparent that the BJP’s Hindutva agenda was at work. “Many things you cannot do by the law but by spirit,” he said.

Assam / peace negotiations

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Source : www.thehindu.com Date : 2024-01-04

I-T SEARCHES, A FORM OF EXTRA-CONSTITUTIONAL POWER

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

January 04, 2024 12:16 am | Updated 02:35 am IST

‘Should the judgment in Puttaswamy be read properly, the state’s power to search and seize cannot be viewed as a simple tool of social security’ | Photo Credit: Getty Images/iStockphoto

In August 2017, a nine-judge Bench of the Supreme Court of India, in Justice K.S. Puttaswamy vs Union of India, declared to rousing acclaim that the Constitution of India guaranteed to persons, a fundamental right to privacy. It was widely believed that the verdict would help usher our civil rights jurisprudence into a new era, where our most cherished liberties are preserved and protected against arbitrary and whimsical governmental excesses.

The six separate judgments rendered in the case spoke through a common voice. The individual, the verdict affirmed, would be placed at the heart of our constitutional discourse and any state action impinging on our privacy, or indeed on any allied right, would be subject to the most piercing of scrutiny.

But much as the ruling infused life into the Constitution’s text, when it has come to interpreting our statutes, the meaning ascribed to our rights has remained unchanged. The promised culture of justification — grounded in principles such as proportionality — is rarely on show. In its place, permeating the conversation is a culture of judicial deference, where our laws continue to be construed on lines that vest absolute authority in the executive.

A notable example of this feature is the use of Section 132 of the Income Tax Act, 1961, which grants to the taxman, untrammelled police power to forcibly search persons and their properties, and seize goods found during such a search, including money, bullion, and jewellery. While this measure can be undertaken only where the authorities have, among other things, a “reason to believe” that a person has failed to disclose his income properly, the purported foundation underlying a search is subject to little safeguards under the statute.

Last month, the Gujarat High Court questioned income-tax authorities on a raid conducted on a lawyer, where he and his family members, according to his counsel, were kept in virtual detention for days together, with the search continuing between the morning of November 3 to the morning of November 7. We do not yet know the full facts here, and we perhaps would not until the culmination of the hearings before the court, but it is scarcely uncommon for actions undertaken through the Income-Tax Act to involve detention of individuals for days on end. When these moves are eventually challenged before the courts — there is no prior judicial

warrant that the statute prescribes — the invariable result is an imprimatur to the search, with the judiciary yielding to executive wisdom.

In its original colonial form, India's income-tax law, as framed under a 1922 legislation, did not provide the revenue with a power to search and seize. What was available was only authority that was otherwise granted to civil courts — powers involving discovery, inspection, examination of witnesses and so forth. In 1947, the Union government sought to rectify this through the enactment of the Taxation on Income (Investigation Commission) Act. But this law was struck down by the Supreme Court in Suraj Mall Mohta vs A.V. Visvanatha Sastri (1954) on the ground that it treated a certain class of assesses differently from others, thereby violating the guarantee of equal treatment contained in Article 14 of the Constitution.

When the income-tax law was altogether refashioned through the enactment of new legislation in 1961, express powers of search and seizure were vested through Section 132. The provision was assailed before a Constitution Bench of the Supreme Court in Pooran Mal vs Director of Inspection (1973). In upholding the law, the Court placed strong reliance on its own judgment in M.P. Sharma vs Satish Chandra, particularly on the following passage: "A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, we have no justification to import it, into a totally different fundamental right by some process of strained construction. Nor is it legitimate to assume that the constitutional protection under Article 20(3) would be defeated by the statutory provisions for searches."

On a reading of this, two things stand out. First, immediately following this passage, the judgment in M.P. Sharma also records the fact that the Court was concerned there with searches under the Code of Criminal Procedure, where actions were customarily made under the authority of a magistrate. Searches under the Income-Tax Act, on the other hand, require no judicial licence.

Second, and this is no fault of the judges in Pooran Mal, the Court's own reading of the law has since changed. Indeed, M.P. Sharma has been formally overruled. As Puttaswamy points out, the judges in M.P. Sharma did not have the benefit of the various interpretive devices that have since become, in Justice S.A. Bobde's words, "indispensable tools in the Court's approach to adjudicating constitutional cases". The different rights guaranteed in the Constitution are no longer meant to be seen as occupying separate silos. Thus, the right to privacy is intrinsic to the right to personal liberty that Article 21 guarantees.

Today, should the judgment in Puttaswamy be read properly, the state's power to search and seize cannot be viewed as a simple tool of social security. It would represent instead a rule that is subject to the doctrine of proportionality. That is, for it to remain lawful, its use must be intended for a legitimate aim; the measure as adopted must be rationally connected to its objective; no alternative and less intrusive means must be available to attain the same purpose; and a balance must be struck between the means chosen and the right that is violated.

A bare reading of Section 132 of the Income-Tax Act suggests a breach of this principle. Although the provision has since not been formally challenged, when the manner of its application came up for discussion in 2022, in Principal Director of Income Tax (Investigation) & Ors. vs Laljibhai Kanjibhai Mandalia, the Court paid no heed to its ruling in Puttaswamy. A two-judge Bench found there that the formation of an opinion necessitating a search was not a judicial or quasi-judicial function but was only administrative in character.

Therefore, it held that the Court ought to look not at the sufficiency or inadequacy of the reasons recorded for a search, but merely at whether the formation of the belief was honest and bona fide. In other words, judges should adopt the “Wednesbury” principle, derived from the U.K. Court of Appeals’ 1948 judgment in Associated Provincial Picture Houses Ltd. vs Wednesbury Corporation. This requires the court to review whether a measure is so “outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it,” and ask nothing more.

Post-Puttaswamy, there ought to be no place for the Wednesbury rule, especially when fundamental rights are at stake. Our constitutional canon demands more. It requires any executive action to conform to statutory law in the strictest sense possible. To that end, a warrant for an income-tax search must be founded on proper application of mind and must be amenable to the most penetrating rigours of judicial review. Any other interpretation would only bestow on the executive a form of extra-constitutional power, risking enormous public mischief.

Suhrith Parthasarathy is an advocate practising in the Madras High Court

Source : www.thehindu.com Date : 2024-01-05

SHIELDING SEBI: ON SUPREME COURT'S RULING AND SEBI PROBE

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

January 05, 2024 12:20 am | Updated 12:20 am IST

The Supreme Court of India's ruling on a batch of petitions, filed in the wake of a U.S.-based short seller's allegations of malfeasance including stock price manipulation at the Adani group of companies, has squarely tossed the ball back to the markets regulator's court. The Court has opted to subordinate petitioners' entreaties to protect larger public interest to its chariness to substitute "its own wisdom over the regulatory policies" of the Securities and Exchange Board of India. In its 46-page order, the Bench headed by Chief Justice of India D.Y. Chandrachud is emphatic in observing that "SEBI has prime facie conducted a comprehensive investigation" that "inspires confidence", and that "the facts of this case do not warrant a transfer of investigation from SEBI" given that "prima facie no deliberate inaction or inadequacy" was found in the regulator's conduct of its probe. Strikingly, the Bench has completely skirted the fundamental questions that the Court-appointed Expert Committee in its May 2023 report had opted to leave as a 'matter between SEBI and the Court' — the determination of possible violations pertaining to minimum public shareholding and related party transactions. The Bench has instead seized upon prayers urging the Court to direct SEBI to revoke its amendments to the Foreign Portfolio Investors Regulations and Listing Obligations and Disclosure Requirements — amendments that were at the heart of petitioners' submissions of regulatory failure — and roundly denied them on grounds that there was neither "any illegality", nor were the norms "capricious, arbitrary or violative of the Constitution".

The ruling has also done little to assuage investors' concerns about SEBI's approach to getting to the bottom of the allegations raised by Hindenburg Research in its January 2023 report. Without elaboration on any of the regulator's findings, the Court has blandly observed that "SEBI has completed 22 out of the 24 investigations into the Adani group" and that completion of the remaining two "are pending due to inputs being awaited from foreign regulators". The Bench has directed SEBI to complete these "expeditiously". While the Court's reluctance to review the policy actions of a 'specialised regulator' is understandable, the decision to leave the crucial question of SEBI's perceived tardiness in investigating allegations of corporate malfeasance and market manipulation by a large conglomerate back to the remit of the very same watchdog hints at a degree of judicial abstinence that may only undermine the larger public good. The Court is surely aware of past instances where it has found SEBI wanting in alacrity of enforcement, a facet flagged by the experts' panel appointed in this case as well. After all, 'justice must not only be done, but it must also be seen to be done'.

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Source : www.thehindu.com Date : 2024-01-09

UNLAWFUL REMISSION: THE HINDU EDITORIAL ON THE BILKIS BANO CASE

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

January 09, 2024 12:30 am | Updated 10:55 am IST

The Supreme Court of India verdict quashing the orders releasing 11 men convicted for the heinous gang-rape and murder of several members of a family during the Gujarat pogrom in 2002 is an unequivocal indictment of the State government. The men had been sentenced to life by a Sessions Court in Mumbai after the investigation in the 'Bilkis Bano case' was shifted from the Gujarat police to the Central Bureau of Investigation and the trial transferred to Mumbai. A disgraceful story that began with the Bharatiya Janata Party government facilitating their premature release and the freed men being garlanded by their supporters has now ended with the Court directing them to return to prison within two weeks. The verdict is based on the ground that Gujarat did not have any jurisdiction to decide on granting remission to convicts sentenced in Maharashtra. In a telling observation, the Bench, comprising Justices B.V. Nagarathna and Ujjal Bhuyan, said, "the State of Gujarat has acted in tandem and was complicit" in one of the convicts' petition for a direction to the State government to grant remission of the remainder of his life term based on a defunct 1992 policy. It has noted that the Gujarat government — which took the correct stand during earlier proceedings that only the government of Maharashtra, where the trial and sentencing took place, was the appropriate government to consider remission — had failed to seek review of a two-Bench judgment's order in May 2022, even though it was wrongly decided based on suppression of material facts. In citing the Court direction as the reason for it to pass orders in favour of the convicts, the State government was guilty of usurpation of power, the Bench said.

The ruling represents a blow for the rule of law and the restoration of faith in the judiciary at a time when there are doubts about the institution's capacity to hold power to account. On merits, it is a timely reiteration of the core principles that animate exercise of the power to grant remission — that it should be fair and reasonable and based on a set of relevant parameters such as whether the crime involved affected society at large, whether the convict retained the potential for committing similar offences or is capable of reform. The release of life convicts, who are generally expected to spend the entirety of their lives in prison, unless remission is granted after a prison term that should not be less than 14 years, ought to be individually considered and not part of any omnibus gesture without regard to the impact of their freedom on the victims, survivors and society. Any rational remission policy should encompass humanitarian considerations and the convicts' scope for reform without violating the rule of law or societal interests. In this case, none of the conditions for remission was met.

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Source : www.thehindu.com Date : 2024-01-10

JUSTICE FOR BILKIS BANO, QUESTIONS ON REMISSION

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

January 10, 2024 12:59 am | Updated 09:29 am IST

‘This case raises important issues on remission and its relationship with punishment that remain unsettled’ | Photo Credit: AP

In an article in The Hindu (August 20, 2022), I had characterised the grant of remission to the 11 gang-rape and murder convicts in the Bilkis Bano case as an ‘injustice of exceptionalism’. The exceptional nature of this injustice is only exemplified by the Supreme Court of India’s judgment in the case delivered by Justices B.V. Nagarathna and Ujjal Bhuyan. As the decision notes, not only did one of the petitioners commit “fraud” by misleading an earlier Bench of the Court in getting a favourable order, leading ultimately to the release orders, but the Government of Gujarat was equally complicit.

Despite the law being amply clear in a Constitution Bench decision in Union of India vs V. Sriharan (2015) that the appropriate government to decide a remission application is the State where the convicts are sentenced, the Court notes that the Gujarat government “usurped” power from the Government of Maharashtra.

Consequently, the Court declared the earlier two judge Bench decision of the Supreme Court holding the Gujarat government as the appropriate government to grant remission in this case as illegal (per incuriam). In effect, the remission orders for the 11 convicts stand cancelled and the men have been directed to go back to the prison within two weeks’ time.

Given the exceptional nature of injustice that pervades Bilkis Bano’s struggle, the Supreme Court is rightfully being lauded for upholding the rule of law. As the decision reads, “rule of law and equality before the law would be empty words if their violation is not a matter of judicial scrutiny.”

Significantly, the firm tone of the decision in calling out the illegalities and the collusion of the Gujarat government with the petitioners is likely to be a soothing balm in Bilkis Bano’s fight for justice. Justice Nagarathna’s words come as solace in light of the disturbing memory of the celebrations that followed the release of the 11 convicts in August 2022.

As a woman and a lawyer, I celebrate this decision. I celebrate Bilkis Bano’s resilience. I celebrate the force and commitment of India’s leading women’s rights lawyers in this case. It is

inspiring.

However, at the same time, this case raises important issues on remission and its relationship with punishment that remain unsettled. But before we get into that, let us briefly examine the concept of remission. Prison is a State subject. As a result, prison rules of each State identify certain reformative and rehabilitative activities that the prisoners can undertake in order to earn remission in the form of days. The total number of days earned in remission is deducted from the actual sentence imposed by the court. Remission is rooted in the logic that, ultimately, prisons are meant to be rehabilitative spaces rather than simply being an instrument to carry out retributive punishment.

In the context of life convicts, they necessarily have to serve a minimum of 14 years in prison before they can become eligible to apply for remission. An application does not guarantee remission and the setting off the earned remission against the punishment imposed by the courts.

Each application has to be individually considered by a committee based on factors laid down by the Supreme Court in Laxman Naskar vs State of West Bengal (2000). These include examining whether the offence is an individual act of crime without affecting the society at large; chance of recurrence of crime; whether the convict has lost their potentiality in committing crime; whether there is any fruitful purpose of confining the convict any more; and socio-economic condition of the convict's family. Naturally, given the individualised nature of the inquiry, these factors are subjective. This makes the reasons guiding these decisions extremely crucial.

However, the reality is that there is both a lack of transparency on how these committees are formed to decide individual applications and reasons guiding the decisions. Such a state of affairs makes remission a potent site for exercise of arbitrary power.

The current case is one such example of unchecked discretion. Besides, the Supreme Court in Epuru Sudhakar vs State of Andhra Pradesh (2006) has held that judicial review of an order of remission is only available when there is a non-application of mind; relevant materials have not been considered, the order is mala fide, or based on irrelevant considerations or suffers from arbitrariness. In the absence of reasons guiding the decisions, there is little scope to challenge them on these grounds. This concern of non-application of mind is writ large in the case of the 11 convicts in Bilkis Bano's case because the orders of the Gujarat government for each of them are exact copies.

In the Bilkis Bano case on remission, the Supreme Court found illegalities and injustices that spoke to 'fraud' and 'usurpation of power' by the government, and, therefore, did not need to go into difficult normative questions. Certain remission policies of States present the question more starkly. States in India today have remission policies that completely deny remission opportunities to certain categories of offenders or have significantly longer periods of incarceration for certain offences before consideration of remission.

We will need to confront the issue of whether certain offenders defined by crime categories must be ineligible for remission. Or, are we better off focusing on developing appropriate conditions for remission and ensuring that there is meaningful and fair compliance with those conditions? A blanket denial of remission for crime categories, rather than ensuring effective compliance with remission conditions, takes us towards a punishment framework that is retributive. These are issues that the Court will inevitably be forced to grapple with sooner than later.

Neetika Vishwanath is Director (Sentencing) at Project 39A, National Law University, Delhi. Research assistance by Nandita Yadav. The views expressed are personal

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Source : www.economictimes.indiatimes.com Date : 2024-01-11

"BIG SHOCK TO THOSE WHO RUN POLITICAL PARTIES THROUGH DYNASTIES": CM SHINDE TAKES SWIPE AT UDDHAV, CONGRESS AFTER SENA VERDICT

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

After Maharashtra Assembly Speaker Rahul Narwekar on Wednesday declared the Eknath Shinde faction as the real Shiv Sena, the chief minister took a swipe at the Uddhav Sena and its MVA partner Congress, saying that the ruling came as a 'shock' to "people who run political parties through dynasties".

Speaking to reporters after the Speaker's ruling dealt a numbing blow to the Uddhav faction, which has been at loggerheads with the rival group led by Shinde, the CM said, "This is the victory of truth, of democracy. This is the victory of Shiv Sena workers and the people of Maharashtra. In a democracy, majority matters. So, as I see it, this decision is based on merit. Nobody can use a political party as private property. This ruling has come as a bog shock to people, who run political parties through dynasties."

Meanwhile, Shiv Sena (Shinde faction) workers erupted in celebrations as the Maharashtra Speaker gave his verdict on cross petitions filed by the rival factions, seeking the disqualification of each other's MLAs.

On Wednesday, while hearing a petition filed by both the Shiv Sena factions seeking disqualification of the rival MLAs after a split in the party in June last year, the Speaker announced that the "Shinde faction was real Shiv Sena when rival factions emerged."

The Speaker went into great length on the Shiv Sena constitution while delivering his crucial verdict, saying, "The decision of Paksha Pramukh cannot be taken as a decision of the political party."

"In my view, the 2018 leadership structure (submitted with ECI) was not as per the Shiv Sena Constitution. Shiv Sena party chief, as per the party constitution, cannot remove anyone from the party...Uddhav Thackeray removed Eknath Shinde or any party leader from the party as per the party constitution. So the removal of Eknath Shinde by Uddhav Thackeray in June 2022 is not accepted based on the Shiv Sena Constitution," the Speaker said.

"Also, the will of the members of the leadership structure of 2018 cannot be the will of the political party, as there are contradictory views and claims about the majority in the leadership structure by both factions," he added.

The Speaker said that given the evidence and records before him, prima facie, these indicate that no elections were held in 2013, as well as in 2018.

"However, I,as the speaker exercising jurisdiction under the 10th schedule, have limited jurisdiction and cannot go beyond the record of the ECI as available on the website and hence I have not considered this aspect while determining the relevant leadership structure," the speaker said.

"Thus, given the above conclusions, I find that the leadership structure of Shiv Sena reflected in the letter dated February 27, 2018, available on the website of the ECI is the relevant leadership structure that has to be taken into account to determine which faction is the real political party," he said.

The Maharashtra Assembly Speaker noted that both factions have submitted different versions of the constitution.

"Then, in that case, what has to be taken into account is the constitution, which was submitted to the ECI with the consent of both parties before the rival factions emerged. Before recording further conclusions, it is imperative to reiterate that, under the initiation of this disqualification, the Maharashtra Legislative Secretariat had a letter dated June 7, 2023, requesting the Office of ECI to provide a copy of the party constitution, memorandum, and rules."

He said the constitution of Shiv Sena provided by ECI is the relevant constitution of Shiv Sena for the determination of which faction is the real political party.

"Shiv Sena had not submitted any constitution to the speaker of the house as per Rule 3 of the legislative rules of 1986. As per the rule, the constitution of the party should have been submitted to the speaker within 30 days of the amendments made to the constitution by the president of the party," he said.

"The 2018 amended constitution of Shiv Sena cannot be considered valid as it's not in the records of the Election Commission of India. As per Supreme Court orders, I cannot delve into any other factor on which the Constitution is valid. As per records, I am relying on the 1999 constitution of Shiv Sena as the valid constitution. The 2018 leadership structure was not in conformity with the constitution of the Shiv Sena (of 1999, which is relied upon). This leadership structure cannot be taken as the yardstick to determine which faction is a real Shiv Sena political party," he added.

The Supreme Court had last month asked Maharashtra Legislative Assembly Speaker Rahul Narwekar to deliver his judgement on disqualification petitions filed by Shiv Sena factions of Chief Minister Eknath Shinde and Uddhav Thackeray by January 10.

Both factions of the Shiv Sena locked horns in June 2022, when Eknath Shinde, along with 37 MLAs, jumped ship to the Bharatiya Janata Party (BJP), leading to the collapse of the Uddhav Thackeray government.

END

Source : www.thehindu.com Date : 2024-01-12

THE INDIAN PARLIAMENT, A PROMISE SPURNED

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

January 12, 2024 12:16 am | Updated 01:29 am IST

‘The choice of the parliamentary form of government was the outcome of a closely deliberated process’ | Photo Credit: ANI

The relative distance from the din and dust that the lamentable turn Indian Parliament took in December 2023, gives us a vantage point to review the state of this foundational institution of public life of the most populous country in the world today. It was one of the gravest security lapses the House has witnessed in its history when two young men with gas canisters jumped on to the floor of the Lok Sabha from its gallery and spread pandemonium there for reasons little known so far.

The incident led to a stand-off between the Opposition and ruling party, eventually leading to the suspension of 146 members of both Houses of Parliament, from different Opposition parties. Much of the discussion on both these unprecedented events has hitherto focused on procedural and regulatory concerns. While they are important, it is also necessary to see the bearing of these events on the conception of a parliamentary government for India.

In historical hindsight, it may be worth noting that while progressive expansion of representation under the colonial aegis exposed a section of Indians to legislative processes, and some of them came under the spell of the Westminster system, the choice of the parliamentary form of government was the outcome of a closely deliberated process. There was much contestation within the Constituent Assembly, as well as outside it, regarding the form of government best suited for India: There were at least four stances around which the debate raged: presidential, Indian orthodoxy, Swarajist, and parliamentary.

Those who argued for the presidential system adduced reasons of stability, unity of the nation, primacy of centralisation, and drew heavily from the American model. Some of its apologists were also tilted towards religious and social majoritarianism. Those who argued for Indian orthodoxy pointed out that one of the cardinal beliefs of Indian anti-colonial movement was to establish a regime founded on Indian classical and tested institutional wisdom, although what it all meant was never spelled out. Those who argued for the swarajist model, defended themselves by invoking Gandhi, and sought a regime resting on village panchayats enjoying maximum powers and autonomy, the higher levels being endowed with those powers lying beyond the compass of the lower rungs.

This debate was decisively won by those who were arguing for the parliamentary model. Those

who marshalled this argument pointed out that there needs to be a decisive authority which can claim itself as the voice of the citizen community at large and being guardians of its mandate. The executive must be collectively responsive to this representative authority. If the executive loses the trust of the popularly elected House, it can no longer continue in office.

While this argument is akin to the defence of parliamentary representative democracies elsewhere, there were two additional arguments the protagonists of this position drew up. They pointed out that a parliamentary system marks a better space for minorities, in the political arena, to make their case in comparison to the presidential system and does not assume what is good for the citizen community in advance as other competing models do. The good of the citizen community is an outcome of debate and discussion in the representative body as a whole. Second, it has better capacity to reach out to ethnic and cultural differences as they can effectively rally in the choice of the representatives. Both these arguments implied that India's representative model encompassed great doctrinal, ethnic, and cultural pluralisms. Some of them may coalesce into a common fold overtime, but others may not, and new ones may sprout forth under conditions of freedom. Those who defended the parliamentary model on this ground also pointed out it was the authentic representative of the true spirit of India.

From the nature of the parliamentary system, it is obvious that such a regime can endure and be effective only if it has stable support, but it has to be questioned and challenged to ensure that it remains faithful to the common good. It is a paradoxical demand: a majority that is elected regards that it has found endorsement from the citizen community, but the reason of the system says such endorsement must be constantly and critically validated by keeping the common good in view. Although the term, political party, did not find a mention in the Indian Constitution till the enactment of the Tenth Schedule, the dialectics of stable support and effective opposition could be institutionally operated only through a competitive party system.

Given the commandeering position the Congress party enjoyed in the First Lok Sabha, Jawaharlal Nehru was sensitive to the absence of an effective opposition, although when such an opposition took shape in the Parliament, he was not very comfortable with it. It is also important to point out that once the Opposition found its effective voice within the House, those radical voices which initially claimed that they took the route of franchise to wreck Parliament from within, were largely absorbed within it. Given the paradoxical challenge that a parliamentary system throws up, the ruling party at the Centre as well as in States, has not found it easy to face a sustained Opposition and employed all subterfuges to limit its space, but the logic of the system has constrained it to live with it.

Given the centrality of Parliament to India's chosen public life, its security breach is a breach inflicted on the nation as a whole. The demand of the Opposition to make this issue central in Parliament is, therefore, understandable. In this context, it was the duty of the leadership of both Houses to ensure necessary assurances and explain the lapses. It did not seem that the present leadership exerted itself in that direction.

On the contrary, they converted the insistent demand of the Opposition, however excessive it might have been, as an affront to the working of the Parliament. There are a range of parliamentary committees. The presiding officers could have taken the Opposition into confidence to form a committee on security, at the least. Was the leadership of the Houses kowtowing to the executive at the expense of their dignity?

Madhu Dandavate mentions an incident when Jawaharlal Nehru sent a note to Speaker Mavalankar which read, 'Sir, I have some urgent work with you. Will you come to my chamber?' Mavalankar wrote on the same note, 'According to the accepted conventions of parliamentary life, a Speaker does not go to the chamber of any executive, including that of the Prime Minister.

However, if you have any work, you are welcome to my chamber.' Nehru apologised and obliged.

While the Opposition in the present Parliament is not a paragon of parliamentary virtue, it is the responsibility of the leadership of the House, including its presiding officers, that it becomes the voice of the nation. The suspension of almost the entire Opposition from both the Houses, can hardly meet this test. It is also important to restate the principle that it is not the truth that a ruling dispensation upholds that serves its claim to rule but its ability to defend the course that it pursues as the truth.

***Valerian Rodrigues has co-authored with B.L. Shankar the book,* The Indian Parliament: A Democracy at Work**

Source : www.indianexpress.com Date : 2024-01-16

EXPRESS VIEW ON BILKIS BANO VERDICT: DOING THE RIGHT THING

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

The Supreme Court verdict Monday is enormously welcome and reassuring. Quashing the remission granted by the Gujarat government to those convicted of rape and murder in the Bilkis Bano case, the highest court has, in the words of Bilkis, “lifted a stone the size of a mountain.” I can breathe again, she said, this is what justice feels like. Since 2002, her struggle and that of her husband and children, has been heartbreakingly arduous — for them, justice itself seemed to shrink when the 11 convicted in 2008 were allowed to walk free on August 15, 2022. Succour has also been provided by the apex court to all those who fought alongside Bilkis, indeed, to all those who believe in the primacy of due process and the need to insulate it from the abuse of political power. As the bench of Justice BV Nagarathna and Justice Ujjal Bhuyan said, what needed to be protected is the “rule of law”, so essential for meeting the constitutional promise of equality before law or equal protection of law. Going ahead, the SC has ensured that the Bilkis Bano case will be seen not just as emblematic of the horrific communal violence that swept Gujarat in 2002, but also of the highest court’s efforts in the aftermath to guard against a wayward justice.

Of course, this may still not be the end of the matter. Since the SC has scrapped the remission on the ground that it can only be granted by the “appropriate” government within whose territorial jurisdiction the conviction took place, not where the crime happened, the convicts may now petition Maharashtra for relief. But the distinction that the SC has made is not just a technical one. Following the Gujarat violence, it had intervened to hand the investigation in some cases, including this one, to the CBI in 2003 and transferred the trial from Gujarat to Maharashtra in 2004. This was amid fears of possible evidence tampering and absence of a conducive climate for a fair trial in Gujarat. The Court’s emphasis on the violation of due process in granting remission is, therefore, not merely procedural — the Gujarat government, which is usurping power that does not belong to it, “acted in tandem and was complicit with the convicts”, it says. It also asks: Why did the Gujarat government not file a review petition seeking correction of the May 2022 order by another SC bench, which was misled into letting Gujarat decide on remission?

To be sure, the apex court erred too. It did not ask the probing questions that it should have, when it was petitioned by one of the convicts in 2022. If it had, it would not have to now set aside its own verdict that paved the way for the Gujarat government’s remission to the convicts. But having said that, Monday’s verdict must also be heralded as a much-needed rebuke to those who had felicitated the convicts when they walked out of jail early. That hero’s welcome did not just offend basic principles of humanity and justice, it also mocked constitutional morality and the rule of law. Days after their release, Maharashtra’s Deputy Chief Minister Devendra Fadnavis rightly flagged this wrong — “a convict is a convict,” he said, “and they cannot be felicitated.” If and when his government receives a fresh remission request, hopefully those words will ring louder than ever.

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Source : www.pib.gov.in Date : 2024-01-16

UNION MINISTER RAO INDERJIT SINGH LAUNCHES THE MPLADS E-SAKSHI MOBILE APPLICATION FOR THE REVISED FUND FLOW PROCEDURE UNDER MPLAD SCHEME

Relevant for: Indian Polity | Topic: Devolution of Powers & Finances up to Local Levels and Challenges therein - Panchayats & Municipalities

The Minister of State (Independent Charge) of the Ministry of Statistics and Programme Implementation (MoSPI) Rao Inderjit Singh launched the MPLADS e-SAKSHI Mobile Application for revised fund flow procedure under MPLAD Scheme today, at Khurshid Lal Bhawan, New Delhi. The launching event was attended by various dignitaries, including the Chief Statistician of India-cum-Secretary, Additional Secretary, and other senior officers of the Ministry, as well as senior officials of SBI and TCS.

The objective of MPLAD Scheme is to enable the Members of Parliament (MPs) to recommend works of developmental nature with emphasis on the creation of durable community assets based on the locally felt needs. The revised set of guidelines aims to broaden the scope of the Scheme so as to enable the MPs to recommend the developmental works as per the changing needs of the community; with an emphasis on improving the functioning, implementation and monitoring of the MPLAD scheme.

The launching of e-SAKSHI mobile application for Members of Parliament (MPs) under the MPLAD scheme will bring forth a myriad of benefits, revolutionizing the way they engage with and manage development projects in their constituencies. The mobile app would offer convenience and accessibility, allowing MPs to propose, track, and oversee the projects at their fingertips. This real-time access enhances decision-making processes, enabling swift responses to emerging needs or issues. The application will streamline the communication between MPs and relevant authorities, facilitating a more efficient exchange of information.

Additionally, the mobile app will promote transparency by providing MPs with instant updates on the status and progress of their proposed projects. This transparency not only fosters

accountability but also instills public trust in the allocation and utilization of MPLADS funds. Furthermore, the mobile application has the features for budget management, ensuring MPs can monitor expenditures.

Top of FormThe entire process of recommendation under the revised guidelines will operate through the web portal as well as mobile application. This innovative technology solution aims to enhance transparency, accessibility, and efficiency in the execution of MPLAD scheme.

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BY/AKN

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Source : www.thehindu.com Date : 2024-01-23

THE IDEA OF ONE NATION, ONE ELECTION IS AGAINST FEDERALISM

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

January 23, 2024 12:15 am | Updated 01:11 am IST

Image for representation | Photo Credit: ANI

In September 2023, the Union Government set up a 'High Level Committee on One Nation, One Election' under the chairmanship of former President of India, Ramnath Kovind. The High Level Committee has met on three occasions and sought the views of various national and State political parties on the subject of a common elections schedule. Recently, public views and those of eminent jurists were also solicited in this regard. Though there is no definitive timeline for the Committee to submit its recommendations, the fact that the timing of this exercise coincides with the lead-up to the general elections in 2024 raises pertinent doubts. Nevertheless, as the outcome of this exercise has the potential to alter the fundamentals of our democratic set-up and reset the federal structure, it is necessary to examine the legal issues at the earliest juncture.

There are compelling reasons to believe that the High Level Committee is likely to return a recommendation in favour of a common schedule comprising elections to the Lok Sabha and the State Legislative Assemblies overlooking genuine constitutional and legal concerns. This is why all the attention, in the aftermath of this exercise, would entirely focus on the Supreme Court of India. This would be India's *Baker v. Carr* moment where the Supreme Court of the U.S. deliberated the concept of "entering the political thicket". The Indian Supreme Court, which has self-characterised its constitutional role as the "sentinel on the qui vive", would be called upon to determine, quickly and purposefully, the ultimate fate of Indian democracy.

Also Read | 81% of citizen responses have affirmed simultaneous polls: Law Ministry

One of the reasons assigned in support of One Nation, One Election is the high amount of expenditure towards the conduct of elections. It is reported that the 2014 general elections cost the public exchequer an estimated 3,870 crore. It is argued that common elections for the Union Parliament and State Assemblies would reduce expenditure significantly. Another reason put forth by proponents of a common election is that the Model Code of Conduct comes into effect twice in a five year cycle, which affects the seamless conduct of government business and results in 'governance downtime'.

Opponents of the common elections contend that these reasons are logically and factually

untenable. The cost of holding free and fair elections to elect a government of the choice of the people is a price that can never be high. There are occasions where a government may not complete a full term of five years, and elections may be held again. Such occurrences are expressions of the democratic system and ought to be accepted. Likewise, the Model Code of Conduct and other guidelines issued by the Election Commission are necessary pains to ensure that executive influence over voters is kept to a minimum and the playing field, during the election period, remains level. In any case, it sounds strange for a Union government and the Election Commission that have refrained from holding Assembly elections in Jammu and Kashmir, for nearly five years, to express strong concerns regarding governance downtime.

In Focus podcast | One Nation, One Election: How feasible is it and what would be its impact?

In *S.R. Bommai v. Union of India* (1994), the Supreme Court declared that the States have an independent constitutional existence, and they have as important a role to play in the political, social, educational and cultural life of the people as the Union. The Constitution provides for a specific tenure for the State Legislatures, which is five years from the date appointed for the first meeting. A similar provision also exists for the tenure of the Union Parliament. Therefore, the introduction of a common election process would necessarily require alteration of the existing duration of a number of State Legislatures. This would go against the express language in the Constitution and be in violation of the view expressed by the Supreme Court in the *S.R. Bommai* case. Therefore, any such action that impinges upon the independent constitutional existence of a State by altering the duration of its Legislative Assembly would naturally be anti-federal and unconstitutional.

The next test would be that of bias, exclusion, and inequality adopted in this exercise. A cursory glance of the website created by the High Level Committee, intended to be a repository of all relevant information on the subject and act as a platform for interaction from all stakeholders, shows that it is available only in English and Hindi. This is to say that such a landmark consultation process is being conducted in one of the 22 official languages of the Union.

Finally, there is a question that goes to the root of the independence of the Election Commission, a constitutional body endowed with autonomy to take independent decisions regarding elections. Similar to demonetisation, when the Reserve Bank of India was kept in the dark, the Election Commission seems to be a silent spectator to the entire process undertaken by the High Level Committee set up by the Union government.

DATA | Why ‘one nation, one election’ would strike a blow against federalism

In the U.K., home of the common law jurisprudence, Parliament is supreme. However, the Indian constitutional architecture is structured differently granting higher courts inherent and broad powers of judicial review when executive actions transgress the fields assigned to them. The stage is set for a constitutional showdown in the not-too-distant future — one that will raise the question of whether constitutional courts, especially the Supreme Court, will enter the political thicket. At the moment, there seems to be no alternative but to enter and wade through the thicket, if the constitutional architecture of this country is to be preserved.

Manuraj Shunmugasundaram is Advocate, Madras High Court, and DMK spokesperson. Dhileepan P. provided inputs for the article

election / voting / democracy

BACK TO TOP

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Source : www.pib.gov.in Date : 2024-01-23

VICE-PRESIDENT TO INAUGURATE 'HAMARA SAMVIDHAN, HAMARA SAMMAN' CAMPAIGN TOMORROW TO COMMEMORATE THE 75TH YEAR OF INDIA AS REPUBLIC

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

The Vice-President, Shri Jagdeep Dhankhar will inaugurate a year long pan India campaign 'Hamara Samvidhan, Hamara Samman' to commemorate the 75th Year of India as Republic, tomorrow i.e. 24th January, 2024 at Dr Ambedkar International Centre. The campaign aims to reaffirm our collective commitment to the principles enshrined in the Constitution of India and celebrate the shared values that bind our nation. This nationwide initiative envisage to instill a sense of pride and responsibility to uphold the ideals outlined in the constitutional framework. It will also give opportunity to every citizen to participate in various ways, empower them to contribute in meaningful way in our democratic journey. Some of the themes to be covered during the Campaign include:-

Sabko Nyay –Har Ghar Nyaya aims to connect the villagers through the Village Level Entrepreneurs of the Common Service Centers and exalt them to read Sabko Nyay pledge; ‘Nyaya Sahayaks’ which will spearhead awareness about the various citizen- centric legal services to the masses, at their door steps across aspirational blocks and districts. At the State/UT level, Nyaya Seva Mela would be organized which would serve as platforms for individuals to seek guidance, information and support on various legal as well as other services and schemes of the government.

Another activity naming Nav Bharat Nav Sankalp aims to encourage the masses to embrace the resolutions of Panch Pran by reading the Panch Pran Pledge. The citizens would get the opportunity to showcase their talent and creativity by participating in Panch Pran Rangotsav (Poster Making competition); Panch Pran Anubhav (Reel/Video making competition). The citizens will also get the chance to test their knowledge on Constitution in engaging way. The activities would be hosted at the My Gov platform.

The third activity Vidhi Jagriti Abhiyan aims to involve the students to carry the message Panch Pran in the villages adopted by the Law colleges, under the Pro Bono Club scheme. It aims to disseminate the legal information of the rights responsibilities and entitlements in very engaging, entertaining and memorable way. It also aims to touch the vulnerable sections of society through Gram Vidhi Chetna, Vanchit Varg Samman, and Nari Bhagidari initiatives.

During the Event, Nyaya Setu will be launched which is a significant and transformative step that aims to extend and expand the reach of legal services till the last mile. It will provide a unified legal interface for legal information, legal advice and legal assistance and thus enable a more inclusive and just society.

The Event will also witness the release of the achievement booklet of the Scheme on Access to Justice ‘Designing Innovative Solutions for Holistic Access to Justice’ (DISHA). Under DISHA scheme Tele Law Programme has connected 67 lakh+ citizens for pre-litigation advice through the use of Tele-Law Citizens Mobile App and via 2.5 lakh Common Service Centers (CSC) situated in 36 States and UTs in the country. The Nyaya Bandhu (Pro Bono Legal Services) Programme aims to decentralize and create a dispensation framework for the Pro Bono Legal

Services programme. It has created a network of 10,000+ of Probono advocates across 24 Bar Councils, created Nyaya Bandhu Panels in 25 High Courts and constituted Pro Bono Clubs across 89 Law schools in the country. In addition to this, more than 7 lakh beneficiaries have been sensitized and made aware on their legal rights and duties and entitlements through webinars and legal literacy programmes being implemented through support of 14 agencies across the country.

Simultaneously, the event will also bring together representatives from Bhashini and IGNOU to formalize their collaboration with Department of Justice. The partnership with Bhashini would break the barriers of language in accessibility to justice. The solutions of Bhashini have already been embedded in the Nyay Setu – Tele Facilitation of legal services. The partnership with IGNOU will open the opportunity for Paralegals to acquire certifications in diverse field of laws, enhance their educational opportunities and increase their skills and employability across different sectors of legal assistance and support.

The dignitaries who will grace the event include Minister of State(I/C) for Law and Justice Shri Arjun Ram Meghwal and Attorney General of India, Shri R. Venkatramani as Guest of Honour.

650+ Tele-Law functionaries from Common Service Centres across the country, students and faculty of the Pro Bono Law colleges will attend this event. This momentous inauguration event will conclude with the key note address by the Vice-President.

The Campaign 'Hamara Samvidhan, Hamara Samman' is being undertaken by Department of Justice, Ministry of Law and Justice, Government of India.

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SS/TFK

The Vice-President, Shri Jagdeep Dhankhar will inaugurate a year long pan India campaign 'Hamara Samvidhan, Hamara Samman' to commemorate the 75th Year of India as Republic, tomorrow i.e. 24th January, 2024 at Dr Ambedkar International Centre. The campaign aims to reaffirm our collective commitment to the principles enshrined in the Constitution of India and celebrate the shared values that bind our nation. This nationwide initiative envisage to instill a sense of pride and responsibility to uphold the ideals outlined in the constitutional framework. It will also give opportunity to every citizen to participate in various ways, empower them to contribute in meaningful way in our democratic journey. Some of the themes to be covered during the Campaign include:-

Sabko Nyay –Har Ghar Nyaya aims to connect the villagers through the Village Level Entrepreneurs of the Common Service Centers and exalt them to read Sabko Nyay pledge; ‘Nyaya Sahayaks’ which will spearhead awareness about the various citizen- centric legal services to the masses, at their door steps across aspirational blocks and districts. At the State/UT level, Nyaya Seva Mela would be organized which would serve as platforms for individuals to seek guidance, information and support on various legal as well as other services and schemes of the government.

Another activity naming Nav Bharat Nav Sankalp aims to encourage the masses to embrace the resolutions of Panch Pran by reading the Panch Pran Pledge. The citizens would get the opportunity to showcase their talent and creativity by participating in Panch Pran Rangotsav (Poster Making competition); Panch Pran Anubhav (Reel/Video making competition). The citizens will also get the chance to test their knowledge on Constitution in engaging way. The activities would be hosted at the My Gov platform.

The third activity Vidhi Jagriti Abhiyan aims to involve the students to carry the message Panch Pran in the villages adopted by the Law colleges, under the Pro Bono Club scheme. It aims to disseminate the legal information of the rights responsibilities and entitlements in very engaging, entertaining and memorable way. It also aims to touch the vulnerable sections of society through Gram Vidhi Chetna, Vanchit Varg Samman, and Nari Bhagidari initiatives.

During the Event, Nyaya Setu will be launched which is a significant and transformative step that aims to extend and expand the reach of legal services till the last mile. It will provide a unified legal interface for legal information, legal advice and legal assistance and thus enable a more inclusive and just society.

The Event will also witness the release of the achievement booklet of the Scheme on Access to Justice 'Designing Innovative Solutions for Holistic Access to Justice' (DISHA). Under DISHA scheme Tele Law Programme has connected 67 lakh+ citizens for pre-litigation advice through the use of Tele-Law Citizens Mobile App and via 2.5 lakh Common Service Centers (CSC) situated in 36 States and UTs in the country. The Nyaya Bandhu (Pro Bono Legal Services) Programme aims to decentralize and create a dispensation framework for the Pro Bono Legal Services programme. It has created a network of 10,000+ of Probono advocates across 24 Bar Councils, created Nyaya Bandhu Panels in 25 High Courts and constituted Pro Bono Clubs across 89 Law schools in the country. In addition to this, more than 7 lakh beneficiaries have been sensitized and made aware on their legal rights and duties and entitlements through webinars and legal literacy programmes being implemented through support of 14 agencies across the country.

Simultaneously, the event will also bring together representatives from Bhashini and IGNOU to formalize their collaboration with Department of Justice. The partnership with Bhashini would break the barriers of language in accessibility to justice. The solutions of Bhashini have already been embedded in the Nyay Setu – Tele Facilitation of legal services. The partnership with IGNOU will open the opportunity for Paralegals to acquire certifications in diverse field of laws, enhance their educational opportunities and increase their skills and employability across different sectors of legal assistance and support.

The dignitaries who will grace the event include Minister of State(I/C) for Law and Justice Shri Arjun Ram Meghwal and Attorney General of India, Shri R. Venkatramani as Guest of Honour.

650+ Tele-Law functionaries from Common Service Centres across the country, students and faculty of the Pro Bono Law colleges will attend this event. This momentous inauguration event will conclude with the key note address by the Vice-President.

The Campaign 'Hamara Samvidhan, Hamara Samman' is being undertaken by Department of Justice, Ministry of Law and Justice, Government of India.

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Source : www.indianexpress.com Date : 2024-01-23

EXPRESS VIEW ON ONE NATION, ONE ELECTION PANEL: FIRST, LISTEN

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

The official consultation process set in motion for gauging the viability of simultaneous elections is unfolding like a chronicle foretold. According to the Union Law Ministry, 81 per cent of the 20,000-plus responses received by the High Level Committee on One Nation, One Election have favoured the idea. The Committee headed by a former president, Ram Nath Kovind, issued a public notice asking for suggestions between January 5-15. Unfortunately, given its constitution, manner of functioning and the larger context of one-party dominance, the Kovind Committee gives the impression of being partisan at best and a rubber stamp at worst. The blame for the lack of robust debate on the proposal also lies with the Opposition, particularly Congress. On an issue with far-reaching consequences, it has refused to engage.

The eight members of the Committee have either openly expressed support for simultaneous polls — as president, Kovind did, in Parliament, in 2019 — or are seen to be close to the government and therefore broadly in agreement with its pet projects. Congress Leader in the Lok Sabha, Adhir Ranjan Chowdhury, refused to be a part of the Committee arguing that it is imbalanced. The Committee's very terms of reference assume that One Nation, One Election is in "national interest". But despite this, an Opposition leader could have played an important role — by voicing concerns the government may not want heard and by pushing for greater transparency in the process. As things stand, the concerns of the Opposition and the states look scattered and are being voiced piecemeal: Congress has called it "undemocratic", AAP has said it will give an "unfair advantage" to the ruling party, the DMK has labelled it "dangerous", and the TMC described it as "against the federal structure".

Admittedly, a near-constant election cycle, and the short-termism this engenders, places a great burden on the exchequer. But while these issues are important, they cannot be used as an excuse to artificially keep governments that lose the support of the legislature and by extension, the people, in power. Certainly, such a fundamental change in the democratic structure and process must not be brought about without adequate engagement with the Opposition's concerns. The legitimacy of the electoral system does not flow only from the Treasury Benches or the corridors of power at Kartavya Path. It also emanates from those without executive office continuing to have a voice. The elected Opposition, all but silenced in the last session of Parliament with the expulsion of 146 MPs, must have a say, and not just a token one, in the consequential matter of the design of elections.

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Source : www.indianexpress.com Date : 2024-01-24

HOW BASIC STRUCTURE DOCTRINE BECAME ONE OF THE STRONGEST SAFEGUARDS FOR INDIAN DEMOCRACY

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

In any democracy, sovereignty is deemed to reside in the people and hence a parliament of their elected representatives represents the sovereignty of the people. But precisely because majority is the heart of democracy and because it is equally a universal truth that power corrupts and absolute power corrupts absolutely, anti-majoritarian safeguards are vital. The highest bulwark of such safeguards is the Indian Constitution. Hence, the best way to institutionalise tyranny and constitutionalise dictatorship would be to amend the Constitution at the will of the majority.

That is the significance of Kesavananda Bharati (KB), India's longest argued case with the largest bench. This 703-page judgment, spread over 11 judicial opinions, established a one-line permanent bulwark against tyranny and dictatorship: Even a constitutional amendment, validly passed by Parliament's special majority, can be declared unconstitutional, if it violates the Basic Structure (BS) of the Constitution. Basic Structure makes it impossible to constitutionalise gross aberrations or institutionalise tyranny, even if Parliament so decrees by a 100 per cent affirmative vote. Since the superior courts have the last word on a case-by-case basis to decide what is or is not BS, making them its final arbiter, this seemingly anti-democratic, anti-sovereignty device, administered by unelected judges, has become the most powerful permanent safeguard for enduring democracy.

The story starts with Shankari Prasad (1951) which upheld the validity of the first constitutional amendment making inroads into property rights by the legislature unchallengeable. The Court held Parliament's amending power under Article 368 to be plenary and declined to fetter it by any limitations. Sajjan Singh (1964) followed and upheld the 17th amendment, which had immunised from challenge a large number of state enactments by putting them in the Ninth Schedule.

Here sprouted the seeds of the future and as yet unborn Basic Structure doctrine. Two Nagpur judges — M Hidayatullah and JR Mudholkar — in Sajjan Singh questioned whether fundamental rights could be the "plaything of the majority". Mudholkar was the first to use the phrase "basic features" in Sajjan Singh and questioned whether they could at all be taken away. Ironically, he traced this approach to an earlier dissent from the Fazlul Chowdhury case in the Supreme Court in Pakistan — a country which has more than twice accepted and then rejected the Basic Structure theory — which had used the phrase "essential features".

In Golaknath (1967), a 6-5 majority of India's largest bench till then, held the entire Part 3 unamendable, while overruling both Shankari Prasad and Sajjan Singh and asserting that "the core rights in our foundational assembly (cannot) be altered by changes." Professor Dieter Conrad of the University of Heidelberg, an Indophile, pushed the theory of implied limitations on the Constitution at a lecture at BHU in 1965, which reached Prof T S Rama Rao at Madras University and was read by Senior Advocate M K Nambyar (father of former Attorney General, K K Venugopal). Conrad forcefully argued that the amending power could not abolish Article 21 or introduce monarchy by a constitutional amendment. He drew heavily on the disastrous consequences from the Weimar Constitution applying unlimited amending powers in his own country. Nambyar argued it in Golaknath but implied limitations were rejected in that case.

Parliament enacted the 24th to 26th constitutional amendments in 1971 to overrule the Bank Nationalisation case, to provide that amount not compensation is sufficient for acquisition, to oust judicial review of any law stated to be in furtherance of the Directive Principles and to overrule the Privy Purses judgment.

These amendments were challenged in the name of the head of a mutt in Kerala, Kesavananda Bharati, who never met

his lawyer Nani Palkhivala and did not

ever personally participate in the apex court proceedings.

It is this implied limitation doctrine which was reincarnated and blossomed when six judges on the KB bench followed Golaknath, accepted that Parliament's amending powers had inherent and implied limitations and did not allow alteration of the Basic Structure. Six others dissented.

The 13th judge, Justice H R Khanna, carried the day. He held fundamental rights amendable, rejected implied limitations, but said, "The power of amendment… does not include the power to abrogate the Constitution nor does it include the power to alter the Basic Structure or framework of the Constitution." Importantly, he specifically approved the core of the Conrad doctrine. The rest is history, with 13 proving lucky for India. Since KB did not hold Part 3 unamendable, it was actually a defeat of the petitioners and a regression from the Golaknath high, but from that retreat, Palkhivala snatched a lasting victory for a nuanced Basic Structure-based unamendability doctrine.

KB could not have been better entrenched than by the unsavoury episode of Chief Justice A N Ray attempting to unilaterally review the judgment in October 1975 and then, seeing the antipathy of his colleagues, abruptly and sheepishly dissolving the Bench. H R Khanna described Palkhivala's arguments on those two days thus: "It was not Nani who spoke. It was divinity speaking through him". Prashant Bhushan's eyewitness account of how and what Palkhivala argued that day and T R Andhyarujina's research on what transpired behind the closed doors of the SC, should be read by all to learn about the momentous Basic Structure doctrine. Case after case has thereafter applied BS. It remains India's pride and the world's envy. Bangladesh, and others in the Commonwealth have imported this Indian judicial invention. It brought out the worst in confrontational politics, governance, intra-judicial divisiveness but also the best in advocacy, idealism and independence amidst great pressure.

Long live Basic Structure, despite the attempt of constitutional pygmies to jettison, dilute or ignore it. Love it or hate it, India cannot do without it.

The writer is a jurist, MP and national spokesperson, INC.

This article is the first in a series marking 75 years of India's Independence

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Source : www.thehindu.com Date : 2024-01-24

LIMITS AND BORDERS: ON THE TERRITORIAL JURISDICTION OF THE BORDER SECURITY FORCE

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

January 24, 2024 01:06 am | Updated 01:06 am IST

Litigation concerning the territorial jurisdiction of the Border Security Force (BSF) in Punjab seems to be the result of the lack of effective consultation between the central and State governments on the issue. Punjab has filed a suit against the Union government under Article 131 of the Constitution, challenging the decision to increase the operational jurisdiction of the BSF from 15 km to 50 km. The border State sees the Centre's move as a breach of federal principles and an encroachment into the law and order powers of the Punjab police. West Bengal has a similar view, and both States have got resolutions passed in their Assemblies against the expansion. In this backdrop, the Supreme Court's decision to examine the questions that arise from the expansion of the BSF's area of operations acquires significance. In October 2021, the Centre had issued a notification under the provisions of the BSF Act, standardising the area over which the BSF would have jurisdiction to operate. In Punjab, West Bengal and Assam, the distance was raised from within 15 km from the border to 50 km, while it was reduced from 80 km to 50 km in Gujarat. For Rajasthan, it was kept unchanged at 50 km. The Union government said in a reply in the Rajya Sabha in December 2021 that the extension of the BSF's jurisdiction will help it discharge its border patrol duty more effectively.

While the Union government may have valid reasons for its move, it should not be seen as encroaching into the domain of the State governments, which have the constitutional responsibility to maintain public order and exercise police powers. The BSF mainly focuses on preventing trans-border crimes, especially unauthorised entry into or exit from Indian territory. It does not have the power to investigate or prosecute offenders, but has to hand over those arrested and the contraband seized from them to the local police. In practice, BSF personnel usually work in close coordination with the police and there ought to be no clash of jurisdiction. It is possible to argue that the expanded jurisdiction merely authorises the BSF to conduct more searches and seizures, especially in cases in which the offenders manage to enter deep into the country's territory. However, it goes without saying that there ought to be strong reasons for the expansion of the jurisdiction of any central force. In this regard, the most relevant questions among those framed by the Supreme Court are whether the Centre's notification encroaches upon the State government's domain; and what factors ought to be taken into account while determining the "local limits of areas adjoining the borders of India".

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Source : www.thehindu.com Date : 2024-01-27

REFLECTING ON BILKIS BANO'S RESILIENT PURSUIT OF JUSTICE

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

January 27, 2024 12:16 am | Updated 08:16 am IST

'The applause the verdict has received is a testament to the collective yearning for a justice system that stands unwavering against impunity' | Photo Credit: AFP

Two weeks, ago, on January 8, the Supreme Court of India delivered a landmark ruling in the harrowing case of Bilkis Bano. The ruling quashed the remission granted by the Gujarat government to the 11 people convicted in the case, on the basis that the State government had "no jurisdiction" to have done so. In keeping with the deadline imposed by the Court, all 11 convicts surrendered on the night of January 21 at Godhra sub-jail.

The convicts in question were part of a Hindu mob implicated in the gangrape of Ms. Bano, who was pregnant at that time, coupled with the brutal killing of several of her relatives, including her infant daughter, during the 2002 Gujarat riots. What made the experience worse for Ms. Bano was that she knew the convicts — they had been her neighbours.

For years, her case has been a symbol of resilience and an emblem of the larger struggle for justice for survivors of sexual violence and communal violence. The Supreme Court's decision to quash the remission not only upholds the integrity of the legal process but also underscores the need for a consistent, impartial application of the law, regardless of the socio-political context. The applause the verdict has received is a testament to the collective yearning for a justice system that stands unwavering against impunity.

Though the ruling has stirred optimism in the justice system, it has simultaneously ignited a profound reflection on the ineffectiveness of the justice system for people with multiple subordinating identities, especially when such crimes are backed by the state. The case prompts a critical examination of the intersectionality that defines Ms. Bano's identity — a Muslim woman navigating a society marked by entrenched biases against religious minorities and women, and how that has determined her relationship with justice. As we celebrate this verdict and the return of the convicts to prison, we must also acknowledge the work that lies ahead. Ms. Bano's journey must serve as an introspective lens for us to think through the broader struggle towards justice, and how best we can serve survivors of sexual violence.

Justice B.V. Nagarathna, who authored the judgment, drew upon the wisdom of Greek philosopher Plato to justify directing the convicts back to prison: "... punishment is to be inflicted

not for the sake of vengeance but for the sake of prevention and reformation. In his treatise, Plato reasons that the lawgiver, as far as he can, ought to imitate the doctor who does not apply his drug with a view to pain only, but to do the patient good. This curative theory of punishment likens penalty to medicine administered for the sake of the one being chastised."

However, the convicts in Ms. Bano's case paint a disconcerting picture of our legal and penal systems, highlighting their inadequacies. Despite being behind bars for about 15 years, they showed no signs of remorse upon their release, underscoring a critical flaw in the prison system's ability to deliver what is expected from it — a "curative theory of punishment" as Plato puts it. The convicts were jubilant as they were garlanded and fed sweets by their supporters and relatives upon their release, almost as if they were battlefield heroes returning home. They even participated in a meeting with the Vishwa Hindu Parishad, a right-wing Hindu nationalist organisation, where they were garlanded once again and their release celebrated.

The Supreme Court's recent decision offering temporary respite to Ms. Bano reveals a disconcerting gap between legal theory and the prison system's stark reality. Despite relying on Plato's notion of punishment as a transformative tool, the judgment overlooked the function of prisons as mere holding cells, failing to instigate genuine rehabilitation. The professed objective of reformation and reintegration into society as responsible citizens rings hollow when one takes into account the glaring lack of essential resources and programmes within most Indian prisons. Without exposure to a better way of life or an alternative thought process that prompts individuals to recognise the errors of their actions, the prospect of genuine personal evolution while in prison becomes elusive. Ms. Bano's experience exemplifies this flaw— once the convicted individuals in her case are released after the completion of their sentence, it is unlikely that they will be reformed, if they have not thus far. Their freedom upon release will again leave Ms. Bano with a lingering sense of trauma. The judgment's fleeting impact exposes a systemic failure to deliver permanent justice or sustainable relief for survivors like Ms. Bano.

Editorial | Unlawful remission: On the Bilkis Bano case

Ms. Bano's case serves as a poignant reminder that the pursuit of justice goes beyond punitive measures. It necessitates a comprehensive re-evaluation of our penal institutions and societal norms. Only through such systemic changes can we hope to break the cycle of crime and ensure a more just and compassionate society. The quest for justice must extend beyond courtrooms to encompass a commitment to building an ecosystem that genuinely addresses the root causes of criminal behaviour and facilitates lasting change.

In the realm of feminist discourse, a term has emerged that demands our scrutiny and contemplation: "carceral feminism". Coined by Barnard College's professor, Elizabeth Bernstein, this term delves into the complexities of advocating for feminist goals in an increasingly carceral state. It sheds light on the paradoxical relationship between feminism and the state, recognising the state as both a potential ally of patriarchy and a depriver of liberties.

India is grappling with the perils of carceral feminism. Feminists have been demanding stricter penalties under the law, without questioning why many women opt not to report cases of rape in the first place. The deeply rooted mistrust in the criminal justice system stems from the entrenched patriarchy which grips each institution of the criminal legal system, starting from their encounters with the police to interactions with medical officers and the judiciary, which cannot adequately be addressed through exclusive reliance on legal reforms and punitive measures. The police force, notorious for dismissing complaints of sexual violence, often compounds the trauma of survivors by subjecting them to uncomfortable and insensitive questioning. This hostile environment extends to the medical examination process, which further distresses survivors and leaves them feeling additionally violated. Sociologist and feminist legal scholar

Pratiksha Baxi aptly describes the rape trial as “pornographic,” revealing the retraumatising nature of the questions survivors endure, which perpetuates a culture of victim-blaming: “Why were you out so late?”; “Why were you alone?”; “Why were you with a boy?”; “Why were you drinking?”; “Why were you wearing that?” Such questions serve to gaslight survivors, insinuating that their actions or choices somehow warranted the heinous crime perpetrated against them.

By understanding the limitations and pitfalls of carceral feminism and the prison’s ability to reform perpetrators, we can strive for a more nuanced, victim-centered approach that does not overly rely on legal avenues and remedies to uphold the principles of justice, while simultaneously safeguarding and prioritising the dignity and the safety of survivors.

As we applaud the Supreme Court for its resolute decision, we must collectively commit to fostering a society where survivors’ voices are heard, their pain is acknowledged, and their quest for justice is validated. In celebrating Ms. Bano’s triumph in the face of every adversity, we must also recognise that it is unfair to expect of every survivor the strength and courage that Ms. Bano had to have to persistently fight for justice despite facing innumerable obstacles from the criminal legal system.

Stuti Shah is a doctoral candidate at Columbia Law School