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A PARLIAMENTARY DEMOCRACY OR AN EXECUTIVE DEMOCRACY

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

June 01, 2023 12:16 am | Updated 02:10 am IST

“The growing irrelevance of Parliament is not because of individual actions but a matter of constitutional design’ | Photo Credit: ANI

Last week, a new Parliament building was inaugurated with both fanfare and controversy. In particular, the exclusion of the President of India — the formal head of the executive — from the inauguration, and the symbolism around the Sengol — a sceptre originally used to signify the transfer of power between Chola rulers — generated significant debate. Submerged beneath this debate, however, is an overlooked fact: the increasing subordination of the “Parliament” in India’s “parliamentary democracy.”

Parts of this story are familiar: we know that Bills are passed with minimal or no deliberation. We know that Parliament sits for fewer and fewer days in a year, and parliamentary sessions are often adjourned. We know that presidential ordinances have become a parallel if not dominant form of law-making.

It is tempting to attribute all of this to unscrupulous or callous politicians. What that misses, however, is the understanding that the growing irrelevance of Parliament is not because of individual actions but a matter of constitutional design. In other words, the Indian Constitution, by its very structure, facilitates and enables the marginalisation of Parliament, and the concentration of power within a dominant executive.

How does this happen? Consider the various safeguards that parliamentary democracies generally tend to put in place against executive dominance or abuse. First, in order to enact its agenda, the executive must command a majority in Parliament. This opens up the space for intra-party dissent, and an important role for ruling party parliamentarians — who are not members of the cabinet — to exercise a check over the executive. Occasionally, ruling party backbenchers can even join forces with the Opposition to defeat unpopular Bills (as was the case with various Brexit deals in the U.K. House of Commons between 2017 and 2019). Second, the Opposition itself is granted certain rights in Parliament, and certain limited control over parliamentary proceedings, in order to publicly hold the executive to account. Third, the interests of Parliament against the executive are meant to be represented by the Speaker, a neutral and independent authority. And fourth, certain parliamentary democracies embrace bicameralism: i.e., a second “Upper House” that acts as a revising chamber, where interests

other than those of the brute majority are represented (in our case, that is the Rajya Sabha, acting as a council of states).

When these features function as they should, it becomes very difficult for the executive to ride roughshod over Parliament and, in turn, opens up space for Parliament to act as the deliberative and representative body that it is meant to be.

In India, however, each of these features has been diluted or erased over the years.

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

First, the possibility of intra-party dissent within Parliament has been stamped out by virtue of the Tenth Schedule to the Constitution, popularly known as the “anti-defection law”. Introduced through a constitutional amendment in 1985, the Tenth Schedule penalises disobedience of the party whip with disqualification from the House altogether. Ironically, as recent events have more than amply demonstrated, the Tenth Schedule has failed to fulfil the purpose for which it was enacted, i.e., to curb horse-trading and unprincipled floor-crossing. What it has done, however, is to strengthen the hand of the party leadership — which, in the case of the ruling party, is effectively the cabinet/executive — against its own parliamentarians. Intra-party dissent is far more difficult when the price is disqualification from Parliament.

Second, right from its inception, the Indian Constitution did not carve out any specific space for the political Opposition in the House. There is no equivalent, for example, of Prime Minister’s questions, where the Prime Minister has to face direct questioning of their record from the Leader of the Opposition as well as by other politicians. In other words, the manner of proceedings in Parliament are under the complete control of the executive, with no real constitutional checks upon how that control is exercised.

In Frames | First look of new Parliament building

Third, this is exacerbated by the fact that the Speaker, in our system, is not independent. The Speaker is not required to give up membership of their political party, and is not constitutionally obligated to act impartially. This has led to an increasing trend, at both the central and the State levels, of Speakers acting in a blatantly partisan manner in order to advance the interests of the executive over the interests of the House. Not only does this affect the quality of the deliberations in the lower house (as the Speaker has control over the conduct of the House) but it also has a knock-on effect on the Upper House: as has been seen of late, when the ruling party wishes to avoid effective scrutiny in the Rajya Sabha over Bills, the Speaker simply classifies the Bill as a “money bill”, thus depriving the Rajya Sabha of the right to make amendments. This was seen most vividly in the case of the Aadhaar Act, where Rajya Sabha scrutiny was avoided in this precise manner, and many important, rights-protecting amendments could not be passed.

Fourth, the role of the Upper House is undercut not only by the Speaker’s misclassification of Bills but also by the constitutionally-sanctioned ordinance making power. An ordinance is nothing more than executive legislation; and while, in theory, it is meant to be used only for an emergency, while Parliament is not in session, in practice, it is used as a parallel process of law-making, especially when the executive wants to bypass the Upper House altogether, at least for a period of time, and create a fait accompli.

When we put all of this together, what emerges is a picture where the only effective check upon the executive is one where the electorate has thrown up a fractured mandate and the ruling

party is forced to govern in a coalition with allies with whom it does not always see eye-to-eye. In such a scenario, coalition partners can exercise something of a check upon the executive in Parliament.

However, when there is a single, majority ruling party, whether at the Centre or in the States, there is very little that Parliament can do. The anti-defection law wipes out intra-party dissent. The political Opposition's scope for participation depends upon the discretion of the executive. Partisan Speakers further ensure that the executive is insulated from public embarrassment at the hands of the Opposition, by controlling the debate. And the Upper House is taken out of the equation, either by the misclassification of money Bills or by the use of ordinance power.

It is no wonder, then, that the quality of parliamentary deliberations has declined: it is simply a mirror of Parliament's own structural marginalisation under the Constitution. Instead, what we have is greater and greater executive power: a situation that resembles presidential systems with strong executives, but without the checks and balances and veto points that those systems have; in effect, the worst of all worlds.

Therefore, even as the new Parliament is inaugurated, the urgent question that we must ask is whether in formal terms, India can continue to be called a parliamentary democracy, or whether we have gradually morphed into an executive democracy. And if, indeed, we want to return to parliamentarianism, what manner of constitutional changes and reforms that it would require.

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A CRITICAL JUNCTURE IN MANIPUR

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

June 03, 2023 12:12 am | Updated 12:44 am IST

Security personnel stand guard at Kangchuk, Manipur, in view of the security situation in the State. | Photo Credit: ANI

In a press statement issued on May 12, 10 Kuki-Zo legislators of the Manipur Assembly, seven of whom belong to the ruling Bharatiya Janata Party (BJP), called for a “separate administration”. They said that the Government of Manipur tacitly supported the “unabated violence” by the majority Meiteis “against the Chin-Kuki-Mizo-Zomi hill tribals,” which has “already partitioned the State and effected a total separation from the State of Manipur.” Not surprisingly, in response, a new valley-based Meitei committee staged a rally in Thoubal on May 20 urging for protection of the State’s “territorial integrity”. Of late, media and public debates have centred around the “sacrosanctity” and “inviolability” of borders.

The demands for a separate administration and for the protection of the territorial integrity of Manipur override the differences within and across the segmented Kuki-Zo and Meitei societies. The road to a separate administration will naturally be a bumpy one. And despite the grandstanding of the Biren Singh-led BJP government and the position taken by Meitei frontal organisations on the “inviolability” of borders, effecting a change of Manipur’s border lies outside the exclusive preserve of the State. For, it is Article 3 of the Constitution that gives unilateral power to the Centre on a State’s border change.

The central question then is: how will this demand for a separate administration constitute a critical juncture in effecting or resisting border change? The answer is that this demand enjoys unprecedented popular support among the Kuki-Zo groups. Earlier demands by tribal communities for a separate administration in the form of a Union Territory or a Territorial Council or the Sixth Schedule were what the report of the National Commission to review the working of the Constitution, constituted by the BJP-led National Democratic Alliance government in 2000, called “non-serious” as they did not have popular support. Also given dissension within and across different segments of the Kuki-Zo groups in the past, a sustained mobilisation for a separate administration remained elusive. Now, faced with a common antagonistic “other,” whose position on this demand is not likely to change in the short term, popular support for this edition of the demand for a separate administration is likely to be sustained and gain more political traction.

Thus, this moment may well constitute a critical juncture in the demand by Kuki-Zo groups for a separate administration. The extensive erasure of lives and land titles, destruction of property,

and the unprecedented displacement of the population across the hills and the valley suggest that the Rubicon of living under one political roof has already been crossed. As suspicion and distrust in Manipur run deep, returning to the status quo ante is now widely seen as amounting to a Hobson's choice. Given that the violence and ethnic cleansing unleashed against both sides of the divide since May 3 has resulted in complete "demographic" and "geographical separation," to borrow from what W.L. Hangshing, the general secretary of the Kuki People's Alliance, told *The Wire*, the demand for a separate administration has become a fait accompli.

This may require a radical shifting of constitutional gears. Three possible institutional architectures are plausible. The first is to grant a separate administration in the hill areas of Manipur for not only the Kuki-Zos, but also the Nagas. The roadblocks to this are the reluctance of some Naga groups to compromise on their expansive territorial project under the rubric of a sovereign 'Nagalim' and the staunch opposition by the State and Meitei groups.

The second is to grant a separate administration for the Kuki-Zo in districts where they are dominant, and resolve the Naga's demand in due course. Invoking administrative convenience and economic viability, the two cardinal principles of State reorganisation in India, as counterpoints against this demand may not work in this case. This is because the institutional and administrative blueprints for this have already been laid down by the extant sub-State constitutional arrangements under the Manipur (Hill Areas) District Councils Act, 1971, where the territorial boundaries of District Councils broadly overlap with ethnic boundaries. In 2016, seven new districts were created out of the existing nine districts in Manipur, which further sharpened this overlap.

Editorial | **Alarming turn: On the situation in Manipur**

Given that Pherzawl and Churachandpur, the two districts where the majority are Kuki-Zo, sit on a rich natural gas belt (the Assam-Arakan basin), effective exploration and harnessing of these resources may offset any counter argument about the economic non-viability of this demand for a separate administration. The Kuki-Zo-dominated districts have two important strategic gateways to Southeast Asia (Behiang and Moreh). This makes the demand for a separate administration a compelling economic proposition. The challenges to this blueprint are districts such as Chandel, Kamjong and Tengnoupal, which are marked by a mixture of populations and have seen long-standing territorial disputes between the Kukis and the Nagas. However, this may not be insurmountable if a combination of territorial and non-territorial autonomy is crafted in the future.

The third possibility is to maintain the status quo ante where the territorial integrity of Manipur is secured. Given the increasingly hardened integrationist position taken by the State and frontal Meitei groups, this may entail dissolution of extant sub-State constitutional asymmetrical arrangements under Article 371C, the district councils and tribal land rights. This will, of course, require not only amendment of the Constitution, but also a revisit to the normative and political foundations of Manipur. The position of the Kuki-Zo groups, to no longer accept the powerless sub-State constitutional asymmetrical arrangements or any political solution within the existing State of Manipur, suggests that this impasse is likely to continue.

This means that Manipur will remain a deeply divided society. If the experience of other such societies including Belgium, Canada, the Netherlands, and Switzerland are to be used as any guide, the holding together of federal polity or polities requires genuine recognition and accommodation of territorially mobilised groups — not as a matter of strategic convenience of the majority but as a matter of enduring value. The reluctance to do this and the lack of democracy and federalism in East European states in the 1990s had led to state break-ups which Manipur may not like to emulate.

The debates to protect the territorial integrity of Manipur are likely to lead to spawn a competing constellation of agendas, ideas and interests without any immediate resolution. Or these may align in complex ways to effect or resist change in the State's border. This is likely to resuscitate the point that defenders of the rights of States and democracy, such as K.T. Shah, raised during the Constituent Assembly debates against Article 3, which B.R. Ambedkar envisaged as a flexible and democratic constitutional provision. Shah argued that to "place power and authority in the Centre" to effect a change of State boundaries without requiring the "consent" of the said States would amount to "the serious prejudice not only of the Units, but even of the very idea of democracy." In their overweening ambition to protect the rights of States and democracy, Shah and others forgot what K. Santhanam, another influential member, cautioned, that mandating "consent" of the States would leverage "absolute autocracy of the majority in every province and State" when they vote down a minority's demand for merger with an adjacent State or for formation of a separate State of their own.

Also read | **Judicial commission to probe Manipur 'ethnic violence', says Amit Shah**

This debate continues to remain unresolved. The jury is out on whether the constellation of agendas, ideas and interests of multiple actors across India's multi-level federal polity and processes align to foster institutions which protect the "absolute autocracy of the majority" or promote and accommodate the rights of territorially mobilised minority groups within and across Indian States.

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TURKIYE'S PRESIDENTIAL ELECTION 2023

Relevant for: International Relations | Topic: Effect of policies and politics of developed & developing countries on India's interests

More from the author

Turkiye held its Presidential election on 14 May 2023. Recep Tayyip Erdogan received 49.52 per cent votes, while his opponents Kemal Kilicdaroglu and Sinan Ogan received 44.88 per cent and 5.17 per cent votes, respectively.1 Since more than 50 per cent votes are mandatory to win the presidential election in Turkiye, a runoff election took place between Erdogan and Kilicdaroglu on 28 May 2023. In the runoff, Erdogan won the presidential election, receiving 52.18 per cent votes, defeating Kilicdaroglu, who could get 47.82 per cent of the votes.2 Given that none of the presidential candidates managed to secure more than 50 per cent of the votes in the first round, the role of Sinan Ogan became decisive in Erdogan's win because of Ogan's endorsement for Erdogan in the runoff election.3

Erdogan led the People's Alliance, which includes the Justice and Development (AK) Party, Nationalist Movement Party (MHP), Great Unity Party (BBP) and New Welfare Party (YRP). Erdogan's campaign strategy encompassed several key elements. Firstly, he emphasised on continuity, presenting himself as a leader who can maintain stability and build on past achievements. This messaging aimed to appeal to voters who value a sense of consistency and progress under Erdogan's leadership. Additionally, Erdogan highlighted the potential for instability if the opposition coalition were to win because of the ideological diversity within the opposition and suggested that their differences could hinder effective governance and decision-making.

This narrative sought to create doubts about the ability of the opposition to provide stable and efficient leadership, thereby positioning Erdogan as a safer choice. Identity issues also played a significant role in Erdogan's campaigns. He tapped into religious and nationalist sentiments, appealing to conservative voters who identify strongly with Turkiye's Islamic and cultural heritage. This approach helped him garner support from segments of the population that prioritise identity-related issues and view Erdogan as a defender of their values and interests. By combining these elements—continuity, the potential for opposition instability, and identity-based appeals,4 Erdogan succeeded in solidifying his support base and attracting voters who prioritise stability, effective governance, and Turkish cultural and religious identity.

Defining true nationalism and "Century of Turkiye"5 to the voters, Erdogan asserted that nationalism could not be achieved through mere displays of power but rather through protecting Turkiye's national symbols, such as the red flag with the crescent and star, and highlighted the significance of standing in solidarity with Azerbaijan and the liberation of Karabakh. Erdogan also stressed the establishment of the Organization of Turkish States and the realisation of long-held dreams. According to him, true nationalism was demonstrated by the ability to produce domestic weapons, vehicles and make independent decisions. Erdogan further contended that nationalism involved combating domestic and international terrorist organisations. He presented the People's Alliance as having achieved these goals through unity and proudly representing the nation without compromising its sovereignty. He proposed the "Century of Turkiye" aiming to make the 100th anniversary of the Republic a starting point for a powerful Turkiye built upon the foundations established over the past 21 years.6

During the election campaign, Erdogan made several promises in various policy areas. Regarding earthquake relief, he announced plans to construct 6,50,000 new flats in south-

eastern Turkiye, with a commitment to deliver 3,19,000 of them within a year. As the Turkish economy is going through a difficult phase, Erdogan pledged to reduce inflation to 20 per cent by 2023 and below 10 per cent by 2024 while also emphasising his intention to continue decreasing interest rates. With regard to housing, he vowed to introduce additional regulations to protect citizens from excessive rent and sale price hikes.

On the issue of refugees, Erdogan pledged to facilitate more “voluntary” returns of Syrian refugees to their country, citing improving dialogue with Syria mediated by Russia. In foreign policy, Erdogan aimed to normalise Ankara's relations in the wider Arab region and sought to establish an “axis” centred around Turkiye. He expressed a commitment to crack down on “terror” groups such as the Gulen movement and the Kurdistan Workers’ Party (PKK). However, regarding LGBTQ+ rights, Erdogan took a conservative stance, promising to actively combat what he referred to as “deviant tendencies” that threaten the traditional family structure. He also accused the opposition of being “pro-LGBT”.[7]

Kilicdaroglu led the Nation Alliance, the coalition of six parties, which has also been termed as “Table of Six”, including the Republican People’s Party (CHP), Good Party, Democracy and Progress Party, Future Party, Felicity Party and Democrat Party. In terms of governance, the Nation Alliance aimed to abolish the executive presidential system brought by Erdogan in 2017 and reinstate a robust parliamentary system to strengthen democracy in the country. Kilicdaroglu contended that Erdogan's authoritarian tendencies have deepened over the past decade or more, requiring a radical institutional change. He appealed to those who believe that a more balanced power distribution between the legislative and executive branches is crucial for democratic governance. In addition to advocating for institutional change, he promised a different governing approach that is quieter and less paternalistic. It implied a departure from Erdogan's assertive and dominant leadership style, with Kilicdaroglu aiming to present a more collaborative and inclusive approach to governance. By championing a return to a parliamentary system, Kilicdaroglu sought to appeal to voters disillusioned with the current political climate and looking for a change in the existing system of government and the leadership style.

The HDP's (People’s Democratic Party) endorsement of Kilicdaroglu led to significant support for him in eastern Turkiye, having a substantial Kurdish population. It indicates a noteworthy shift in political dynamics and a potential realignment within the country’s political sphere. The HDP's backing of Kilicdaroglu seems to have resonated with Kurdish voters seeking an alternative to the ruling party, bolstering his electoral appeal in the region. In contrast, Erdogan has strategically framed Kilicdaroglu’s ties to the HDP as a means to undermine his credibility, linking the HDP to the Kurdistan Workers' Party (PKK), an armed group that has been engaged in a long-standing conflict with the Turkish state since 1984. By associating Kilicdaroglu with “terrorists”, Erdogan aimed to cast doubt on his leadership abilities and appealed to nationalist sentiments within the country. This tactic delegitimised the HDP’s support for Kilicdaroglu to reinforce the perception that any alliance with the HDP is tantamount to supporting terrorism.

During his campaign, Kilicdaroglu made several policy pledges in various areas. In terms of earthquake relief, he vowed to construct houses for victims free of charge and implement a ban on property sales to foreigners until the housing crisis was resolved for Turkish citizens. Regarding the economy, Kilicdaroglu pledged to reintroduce more traditional economic policies, aiming to reduce inflation and criticised Erdogan's low-interest-rate policy. He also expressed the intention to rebuild the confidence of foreign investors and transform Turkiye into a high-value product manufacturing country. Kilicdaroglu further outlined plans to quadruple the social housing inventory within five years and cap social housing lease costs at 20 per cent of the minimum wage.

Concerning refugees, Kilicdaroglu stated his intention to work with the Syrian government to

facilitate the return of Syrian refugees to their home country. In terms of foreign policy, he emphasised dialogue with all international actors and repair Turkiye's relations with the West. He specifically mentioned his aim to establish visa-free travel for Turkish citizens to the European Union's Schengen area within months of assuming power.8 It may be argued that despite the involvement of all state institutions in favour of Erdogan's campaign, Kilicdaroglu garnered 47.82 per cent votes, signifying a remarkable achievement indicating the popular support base in Turkiye for the latter. However, in the electoral campaign, the opposition could not strategically leverage the popular discontent, economic downfall, the government's lethargic response in the aftermath of the earthquake and its excessive media control, resulting in its ultimate defeat.

The election took place in a challenging economic context pertaining to the currency crisis, high inflation rates, surging living costs and the massive task of infrastructure building in the aftermath of the devastating earthquake. The Turkish lira has experienced significant devaluation against the dollar, losing nearly 95 per cent of its value in the past 15 years. It indicates the need for strong economic policies and management to address the persistent inflation, which remains high at over 40 per cent.9 In the 2018 Turkish Presidential Election, Erdogan garnered 52.59 per cent votes.10 Securing 52.18 per cent votes in 2023 evidently shows that Erdogan has not been able to increase his vote share. However, it can be argued that despite all the pre-election hype of substantial popular support for the opposition, Erdogan has been successful in conserving his traditional votes. His five years tenure is likely to see similar domestic policies and slightly assertive foreign policy in the foreseeable future. It remains to be seen how Erdogan will govern the country in the face of simmering challenges due to economic hardships and fulfil the promise of bringing "Century of Turkiye", encompassing the entire nation with the welfare of children, youth and women.

Views expressed are of the author and do not necessarily reflect the views of the Manohar Parrikar IDSA or of the Government of India.

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CREEPING CHANGE: THE HINDU EDITORIAL ON THE HIGH COURT RULING IN THE GYANVAPI MOSQUE CASE

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

June 05, 2023 12:20 am | Updated 12:20 am IST

By holding that a suit filed by five women to offer worship to Hindu deities at the Gyanvapi Mosque in Varanasi was maintainable, the Allahabad High Court has possibly legitimised a clever attempt to question its status. In an order that upholds a district court verdict to the same effect, Justice J.J. Munir has ruled that the suit is limited in scope to enforcing the plaintiffs' right to worship Hindu deities and that it is not an attempt to convert the mosque into a temple. As a result, he has held that the suit is not barred by the Places of Worship (Special Provisions) Act, 1991, a law that froze the status of places of worship as they stood on August 15, 1947. In the process, the court has rejected the objections by the Committee of Management of the Anjuman Intezamia Masjid, Varanasi, that the suit is barred by the 1991 law, as well as the Uttar Pradesh Wakf Act, 1995, and the U.P. Sri Kashi Vishwanath Temple Act, 1983. Given the fact that Hindu revanchism has been quite active in claiming that several places of worship of Muslims had been constructed on the ruins of Hindu temples after their demolishment, it is a matter of concern that the judiciary has endorsed the use of legal means to lay the foundation to building a possible future claim on the Gyanvapi Mosque.

The court is right in noting that while deciding a motion to reject a civil suit at the threshold, it has to limit itself to the assertions made in the plaint. The plaintiffs have claimed that Hindu deities were being worshipped at the mosque precincts before and after August 15, 1947. In particular, they have claimed that daily worship of Hindu deities was going on at Gyanvapi till 1990, after which it was suspended at the peak of the movement against the Babri Masjid in Ayodhya. After 1993, it was limited to a single day every year. A relevant question is whether it is merely a suit to assert a right to worship, or if it is part of a larger design. The court has rejected the objection that the suit is an instance of 'clever drafting' to cover up an attempt to change the mosque's status. However, it should be noted that the plaintiffs also question whether the mosque was built on Wakf property, and assert that property vested in the deity would remain with the deity even if the structure was destroyed. It will be truly unfortunate if the customary right of worship is allowed to lead to incremental or creeping changes to the mosque's status.

judiciary (system of justice) / religion and belief / Varanasi / Uttar Pradesh / Ayodhya

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Source : www.thehindu.com Date : 2023-06-05

A VOTE FOR CHANGE: THE HINDU EDITORIAL ON THE RESULT OF THE THAI PARLIAMENTARY ELECTION

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

June 05, 2023 12:10 am | Updated 12:10 am IST

For Thai voters, the May 14 parliamentary election offered a stark choice between the royalist, military-backed government and the pro-democratic, reformist opposition. They overwhelmingly supported the latter. When the preliminary results were announced, the progressive Move Forward Party emerged as the single largest bloc with 152 seats. The Pheu Thai Party, another pro-democratic outfit led by Paetongtarn Shinawatra, daughter of former Prime Minister Thaksin Shinawatra, came second with 141 seats. All the pro-government parties did poorly. Both the Move Forward and the Pheu Thai have promised to stand up to the military, which captured power in 2014 through a coup, and address the country's economic issues. The Move Forward, a political upstart led by 42-year-old Pita Limjaroenrat, is now leading coalition talks and has staked a claim to form the next government. During the campaign, Mr. Pita was critical of the establishment and offered a new beginning to Thai voters. The party's manifesto promised to stop military conscription, end the "cycle of coups", tackle business monopolies and scrap the military-drafted Constitution. It also vowed to amend the controversial lèse majesté law, which shields the monarchy from public criticism. The Move Forward's promises helped the fledgling party easily connect with a public which was increasingly angered by Prime Minister Prayut Chan-o-cha's authoritarianism and the drying up of economic opportunities.

But an electoral victory does not necessarily mean that the Move Forward has an easy way towards forming a government. The Opposition coalition has a majority (309) in the 500-member elected House, but in Thailand's 750-member bicameral Parliament (250 members of the Senate are appointed by the military), Mr. Pita would need the support of 376 legislators to form the government. His criticism of the military and the promise to amend the royal defamation law have made the generals wary of his rise. If the Senate votes as a bloc against the Opposition coalition, he would not be able to form the government. It remains to be seen what will happen between now and July 13, when the Election Commission will officially ratify the results. In the 2019 election, the Future Forward Party, the predecessor of the Move Forward, emerged the third largest party, surprising the generals. It was subsequently dissolved and its leaders banned from politics. Mr. Pita is already facing cases for allegedly violating electoral laws. But any move to stop the winners of the election from forming the government would be disastrous for a country that is on the brink. Thailand witnessed widespread pro-democracy protests in 2020, which were crushed by the regime. Some 14 million people voted for Move Forward and if the military defies their mandate, it would only widen the cracks in society. Instead, the generals should see the elections as an opportunity to cede power and allow the winners to form the next

government.

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Thailand / parliament / election / economy (general) / politics / laws / armed Forces

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THE DELHI ORDINANCE IS AN UNABASHED POWER-GRAB

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

June 05, 2023 12:08 am | Updated 12:37 am IST

‘The ordinance raises multiple legal and political questions regarding federalism, democracy, bureaucratic accountability, executive law-making, and judicial review’ | Photo Credit: SHIV KUMAR PUSHPAKAR

On May 19 this year, the Union government promulgated an ordinance to amend the Government of National Capital Territory of Delhi (NCTD) Act, 1991 that effectively nullified the Supreme Court judgment of May 11 on the powers over bureaucratic appointments in Delhi. After an eight-year long protracted legal battle, a five-judge Constitution Bench led by the Chief Justice of India D.Y. Chandrachud had unanimously held that the elected government of Delhi had legislative and administrative powers over “services”.

The ordinance removes Entry 41 (services) of the State List from the Delhi government’s control and creates a National Capital Civil Service Authority, consisting of the Chief Minister, Chief Secretary and Principal Secretary-Home, to decide on service matters in Delhi. Decisions of the Authority will be made through majority voting, which means that two Union-appointed bureaucrats could overrule the Chief Minister. Further, the ordinance provides that if a disagreement arises between the Authority and the Lieutenant Governor (LG), the decision of the LG shall prevail. The ordinance raises multiple legal and political questions regarding federalism, democracy, bureaucratic accountability, executive law-making, and judicial review. Several Opposition parties, barring the Congress, have supported the Aam Aadmi Party (AAP) government in its opposition to the ordinance. Congress leader Ajay Maken said that “cooperative federalism principles don’t fit” Delhi since it is the “National Capital”. In this context, it is important to examine how the ideas of federalism fit in unique contexts such as Delhi.

The position of Delhi in India’s federal constitutional scheme is not straightforward. The Supreme Court, in its May 11 verdict, had noted that the addition of Article 239AA in the Constitution accorded the National Capital Territory of Delhi (NCTD) a “sui generis” status. The Court held that there is no “homogeneous class” of Union Territories and States; rather, India’s Constitution has several examples of special governance arrangements which treat federal units differently from each other. It noted that the special provisions for States under Article 371 are in the nature of “asymmetric federalism” made for “accommodating the differences and the specific requirements of regions”.

Scholars of federalism have long argued that for countries with deep social cleavages along ethnic, linguistic, and cultural lines, an asymmetric model of federalism, which accommodates the interests of various social groups through territorial units, is desirable. India's federal system has been described as asymmetric due to the special status it accorded Jammu and Kashmir under Article 370 (before its dilution) and special protections under Article 371, and 5th and 6th Schedule Areas.

What is striking about the Court's judgment is that it used the asymmetric federalism framework to clarify the position of the NCTD in India's federal scheme. It remarked that though NCTD is not a full-fledged State, since its Legislative Assembly is constitutionally entrusted to legislate upon subjects in the State and Concurrent Lists, the insertion of Article 239AA created a "asymmetric federal model" for the NCTD. So, while the NCTD remains a Union Territory, the "unique constitutional status conferred upon it makes it a federal entity".

While the invocation of asymmetric federalism for Delhi is interesting, the Court was a mute spectator when this idea was annihilated in Jammu and Kashmir. Nevertheless, an articulation of the underlying principles of federalism in this case is welcome. The Court noted that the principles of federalism and democracy are interlinked since the States' exercise of legislative power gives effect to people's aspirations and that federalism creates "dual manifestation of the public will" in which the priorities of the two sets of governments "are not just bound to be different, but are intended to be different". Such a clear expression of the federal principle punctures hollow exhortations of "cooperative federalism" that have been weaponised to centralise Indian politics.

The presidential ordinance is problematic at different levels. First, the government's swift and brazen act of undoing a Constitution Bench judgment does not augur well for judicial independence. While the legislature can alter the legal basis of a judgment, it cannot directly overrule it. Further, executive law-making through an ordinance, as the Supreme Court held in D.C. Wadhwa (1987), is only to "meet an extraordinary situation" and cannot be "perverted to serve political ends". Most crucially, adding an additional subject of exemption (services) to the existing exemptions (land, public order, and police) of Delhi's legislative power listed in Article 239AA, without amending the Constitution, is arguably an act of constitutional subterfuge. Finally, creating a civil services authority where bureaucrats can overrule an elected Chief Minister destroys long-established norms on bureaucratic accountability.

For all of these reasons, the ordinance is a direct assault on federalism and democracy. Such an unabashed power-grab by the Union government needs to be opposed by all who care for the future of India as a federal democracy. However, Opposition parties do not often take a position on federalism on first principles or articulate it as a normative idea. Hence, AAP cheered the dilution of Article 370, and now the Congress refuses to oppose this ordinance. This poses limits for federalism to act as a counter-hegemonic idea. As the foundations of India's constitutionalism are threatened, we need a new politics of federalism that reflects and articulates the underlying values of federalism consistently.

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New Delhi / laws / government / democracy / judiciary (system of justice) / constitution / Jammu and Kashmir / Aam Aadmi Party / Indian National Congress / politics / Article 370

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THE INDIAN POLITY, A DEMOCRATIC DIAGNOSIS

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

June 07, 2023 12:16 am | Updated 08:26 am IST

‘Will the new Parliament building enhance the democratic process in the polity?’ | Photo Credit: PTI

An opinion article, last month, in one of India’s main English dailies, summed up the emerging prospects succinctly: ‘A parliamentary majority is being used as a bulldozer to fashion an autocracy, the new India version of a presidential form of governance…The replacement, at the forthcoming inaugural [of the new Parliament building], of the real president of the Indian republic by the prime minister may symbolise more than the ego of an individual’.

I had, some years ago, read and put away Levitsky and Ziblatt’s book on the fate of democracies, happy in the thought that India did not find a mention in it. Little had I visualised a time when dexterous devices would be used in quest of the desired objective.

Our parliamentary system, crafted with some care, was sought to achieve law-making; accountability of the executive; approval of taxation proposals and control of national finances, and discussion of matters of public interest and concern. India, it said, ‘shall be a Union of States’ and the provisions of Part XI of the Constitution would govern the relations between the Union and the States.

B.R. Ambedkar had emphasised that the eventual objective of social democracy is a trinity of liberty, equality and fraternity, best achieved through the effective functioning of the legislature, the executive and the judiciary. These foundational principles were spelt out in the Preamble of the Constitution and were reinforced by the Supreme Court of India in the Basic Structure doctrine.

The challenge was in effective functioning of the principal ingredients, beginning with the first. Available data make evident a progressive decline in its functioning year-wise, session-wise and decade-wise. It is clear that Parliament has lost its effectiveness as an instrument of scrutiny, accountability and oversight. Instead, devices of disruption crafted in opposition and innocently disowned in government, are sought to be legitimised. Above all, the leadership of the day endorses it by a studied silence or lack of attendance, or both and with a noticeable tardiness towards the functioning of the standing committees. The end result is a declining process of scrutiny, debate and dissent. Periodic elections apart, informed opinion is concerned about its derailment and the resultant consequences. The emergence of social media, a rival claimant to representative in civil society, has emerged as both complementary and antithetical to question or supplement the representativeness of Parliament. It has manifested itself in both forms in our

polity. So, as a political scientist put it, ‘while Parliament has become increasingly representative in descriptive terms, it also simultaneously become[s] unresponsive in terms of legislation and governance and has tended to avoid accountability by closing ranks’. An element of ideological orientation in the shape of dharmic sanctification, as in the Parliament ceremony, was used to reinforce it.

Editorial | An alarming fall: On the standard of India’s parliamentary sessions

These moves suggest a design for centralisation and personalisation, and the creation of a ‘Fuehrer or Zaeem-like’ image not unknown in recent history. Alongside, administrative devices have been sought to be used to bring in line state institutions having an impact on the electoral process. Both contributed to the achievement of a transition from populism to electoral authoritarianism; both are violative of the spirit of the constitutional text.

One consequence of this trend, reflective of the unease generated by it, is a statement in the shape of a letter written to the President of India recently by a group of former civil servants expressing concern over attempts by the government to change the character of the civil service and its functioning, leading to the civil servants being ‘torn between conflicting loyalties’, thereby weakening their ability to be impartial. ‘This has disturbed the federal balance and left civil servants torn between conflicting loyalties, thereby weakening their ability to be impartial’.

These trends in the changing character of the Indian polity have caused public concern and have not gone unnoticed by observers abroad. One editorial comment opined that ‘Hindu nationalism in India is writing an epitaph for the country’s experiment with multi-ethnic secular democracy’. In his tome published last year, Christophe Jaffrelot analysed the Hindutva ideology (laced with populism) based on Israeli scholar Sammy Smooha’s theory of ethnic democracy — defined as the ideology of a group that considers itself bound by racial, linguistic, religious or other cultural characteristics with a sense of superiority and rejection of the ‘Other’ generally perceived as a real or perceived threat to the survival and integrity of the ethnic nation.’

The conflation between nationalism and Hindutva has been the backbone of the new hegemony that has been of immense help to the Bharatiya Janata Party (BJP) in projecting a potent conjoint image of Hindutva and development. That, as Suhas Palshikar has pointed out, “is why the Bharatiya Janata Party has been so happy with intellectuals trying to problematise the nation. That particular intellectual initiative simultaneously places the BJP in a position of immense advantage and ensures that ‘anti-BJP’ would necessarily be equated with the anti-national. Independently, both ideas — Hindutva and development — are potent political discourses. By weaving them together with nationalism, Narendra Modi has bound them into an arsenal of his political offensive.”

This carefully calibrated personality cult with an image of infallibility has been reinforced by the publicity associated with India’s presidency of the G-20. The entire effort is to mesmerise the public, particularly the middle class, with the delusion of an image of India being the Vishvaguru at a time when the contrary is observed — in the falling standards in educational institutions, in rising unemployment and its impact on public welfare.

The inauguration of the new building of Parliament was noticeably devoid of any suggestions to make its functioning more meaningful. The formal equality of the two Houses seems to have been done away with and the Leader of the Lok Sabha in his oration could have suggested (but did not), measures to increase the working days to 90-100 days as in the past, initiate the practice of having a Prime Minister’s Question Hour each week in both Houses, and proposed more effective measuring for the functioning of the Committee system to enhance its effectiveness and public confidence. More working space for the Members of Parliament could

thus be justified in practice. No such suggestions, however, were forthcoming.

So, will the new building contribute to a more functional and productive Parliament? Will it enhance the democratic process in the polity? Will it, as the Prime Minister said in his inaugural speech, ‘awaken the sense of duty in every Indian’ and include in it those who sit and work in the new structure and those who lead it in its primary duty? Would he recall to himself and his colleagues Ambedkar’s December 1952 lecture, on ‘Conditions Precedent for the Successful Working of Democracy’?

Hamid Ansari was the Vice-President of India (2007-2017)

Source : www.thehindu.com Date : 2023-06-12

MANIPUR, A RUDE REMINDER OF NORTHEAST TENSIONS

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

June 12, 2023 12:16 am | Updated 02:02 am IST

“The impression that Delhi is neutral in any conflict, and is only on the side of justice has to be properly communicated’ | Photo Credit: AFP

Violence in Manipur, which has gone on for over a month now, claimed well over a 100 lives and displaced thousands more, and has opened many raw wounds that most people had hoped belonged to a bygone era. The spectre of an unbridgeable divide between the Meiteis on the one hand and the Kuki-Chin-Mizo-Zomi-Naga tribes on the other is now all too evident, and any resolution will demand utmost sensitive handling. The ethnic divide and violence seems to suggest that little has changed in the northeast, notwithstanding the many developments in place. Thus the healing process is likely to be a long-drawn-out one.

Most people across the country had reason to believe that the northeast had over time become well and truly integrated. Also, that there were now more commonalities rather than differences amongst the various tribes and communities. The ethnic violence in Manipur, consequently, has come as a rude reminder. Notwithstanding improved communications, better transit facilities, and support for the special needs of the region, there does still exist a divide between the tribes and plains people within the region.

It is easy to pontificate whenever an outbreak of violence of this magnitude takes place, and to harp on certain aspects such as the existence of an excess of region-centric calculus, lack of internal cohesion, and ethnic/caste rivalries as the causes for internal tensions and violence. Such aspects, fortunately, had become lesser in number in recent times, but it is possible that the fraying of our composite culture in recent times — which has also effected other parts of India — is casting a shadow over the northeast.

An additional dimension in the northeast is the presence of ethnic sub-nationalism and identity politics in an aggravated form. Ethnic allegiance had oftentimes been in conflict with mainstream nationalism or vice-versa previously, but it was hoped that such tensions had subsided. The Manipur developments imply that in much of the northeast, ethnic identities still overshadow and overwhelm all other considerations. What is also disturbing is that according to some reports from the region, consolidation efforts by different tribal entities were resulting in subterranean pressures, and the result is that many issues which were deemed settled seem to have been reopened. This applies specially to Manipur where, of late, there have been incipient signs of a

resurgence of ultra-nationalistic tendencies. The confrontation between Meitei versus Kuki-Naga ultra-radicalism, as evidenced in Manipur these past weeks, needs to be viewed in the larger context of the conflict between the plains Meiteis and the Kuki-Mizo-Chin-Zomi-Naga hill tribes. What we witness in Manipur today is a conflict between charged up Meitei chauvinism seeking to consolidate their position within Manipur and across the region, in opposition to the Kukis, Mizos and other tribes. The Meiteis may lack a significant militaristic profile, but the Meiteis had earlier on developed a strategy of networking with other northeastern resurgent outfits and militant groups at one level, and with Maoist groups in the hinterland States of the country, at another. This is a matter of record.

Currently, the polarisation between the majority Meitei, and the other tribal communities, in Manipur appears total and irreconcilable. Notwithstanding the peace moves by the central authorities, fresh outbreaks of violence continue. Relocation of the two communities is taking place vigorously with parts of the State being designated as Meitei and Kuki, respectively. The demand for a separate administration as a prelude to the division of the State along these lines is currently gaining momentum.

The State Government — more specifically, the Chief Minister — has come under severe attack by the Kuki tribals for the ongoing violence. This is accompanied by accusations that the police are siding with the Meitei attackers. Meitei elements, in turn, have threatened to form a ‘civilian defence force’ to protect their people against attacks by Kuki militants. Old issues are being resurrected, such as the burning of the historic Centenary Gate in Leisang village by Meitei miscreants, thus sharpening the divide. Demands for the dismissal of the State government and the imposition of President’s rule under Article 356 of the Constitution, alongside a demand by tribal groups such as the Kukis-Chins-Mizos-Zomis, urging the Centre to give the region inhabited by them a separate administration, are being vociferously raised.

The Home Minister, Amit Shah’s recent visit to Manipur promised much, but it is highly uncertain whether the solutions that he has proposed — which is the standard prescription in all such situations — are the right ones at this time. His announcement of a judicial probe into the ethnic violence and of a three-member committee headed by a judge has been well received. His proposal for the creation of a unified command to oversee security in the State, however, appears draconian in the prevailing circumstances. The announcement of a Central Bureau of Investigation inquiry into specific incidents of violence is a welcome measure. However, changing the Director General of Police, who belongs to the Kuki tribe, on grounds of ineffectiveness may only serve to heighten the gap between the warring Meitei and Kuki communities.

What is needed at this time is for saner voices to play a leading role. Notwithstanding the fact that the northeast has been spared serious violence for some years now, the reality is that it is still a volatile region. It is in the process of changing and adapting to newer circumstances. What the Centre needs to achieve is an ‘optimal positioning’ even if it may seem like giving far too many concessions. Delhi is on test as to how it would adjust or react to the new situation that has presented itself — this demands innovative thinking. Even as States in the region crave greater autonomy, the process of achieving a proper equilibrium requires both sensitivity and ‘out of the box’ thinking.

Understanding cultural factors are critical, specially in times of conflict. The Meitei versus Tribal divide is both a cultural and sociological phenomenon. A solution demands a combination of adjusting to realities, coupled with an understanding of the moral imperatives of the numerous tribal communities that dot the northeastern landscape. The art is to come up with an agreement in which both or more parties to the dispute think it is the best from their point of view. A solution to the Manipur imbroglio in quick time is important — if a satisfactory solution is not found early,

it could aggravate centrifugal tendencies that have not entirely been dissipated, despite the best efforts of successive governments in Delhi and in the region over the past 75 years. The region is beset with people belonging to different cultures often confronting each other. Delhi has consistently tried to avoid an adversarial policy, and, instead, has sought dialogue. This is still the best remedy available, while avoiding any impression of weakness on the part of Delhi.

Delhi needs to acknowledge to itself that the situation in Manipur poses a ‘problem’ of no mean magnitude. An answer has to be found sooner rather than later before it ignites similar conflicts elsewhere in the region where such tensions also lurk. All communities across the region crave ‘security’. The impression that Delhi is neutral in any conflict, and is only on the side of justice has to be properly communicated. The key task for Delhi would be to be seen to act on the basis of overreaching moral principles without, however, making a virtue of such principles. Today, there is enough common purpose and principles across the partisan divide; what is often absent is a weak democratic resolve and an ability to act in the shared national interest.

M.K. Narayanan is a former Director, Intelligence Bureau, a former National Security Adviser, and a former Governor of West Bengal

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SAME-SEX MARRIAGE: MORALITY VS EQUALITY

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

June 13, 2023 01:05 am | Updated 02:35 am IST

People from the LGBTQ community participate in a march in Mumbai. File | Photo Credit: Emmanual Yogini

Just a few days before the Supreme Court of India commenced hearings on the same-sex marriage issue, one of the world's leading philosophers, Michael Sandel, was in India to take part in a media group's conclave.

Introduced as a "rockstar" during the event and prodded to make comments on banal local politics, the significance of his ideas for deeper moral questions facing Indian society remained lost on most.

For example, while arguments based on the various strands of liberalism were being marshalled before the Supreme Court, Sandel's critique of contemporary liberalism should also have been part of the repertoire for consideration.

This critique highlights a difficulty in any attempt to sort out the issue of same-sex marriage within a liberal framework of individual rights.

For, if the Court were to adjudicate on the right to marry it would have to break its neutrality on moral questions about the desirability of marriage, what fits into the institution and what it means to people – a neutrality mandated by its jurisprudence on equal concern for all irrespective of social or personal morality.

In fact the idea of constitutional morality has been used by the Supreme Court in many cases to maintain neutrality on moral issues.

Following this neutrality would mean the Court should stop at ensuring that people's legal rights are protected just like how it held that those in live-in relationships are entitled to legal protection irrespective of the societies' moral view on such relationships.

But to mandate the state to recognise a particular kind of marriage on the basis of equality is to recognise marriage as a social honour and pronounce on its moral worth. It would be violating the liberal tenet of neutrality.

So even for an ardent votary of same-sex marriage like the philosopher Martha Nussbaum, state

intervention in the matter is only the second best option- “[S]o long as the state is in the marrying business, concerns with equality require it to offer marriage to same-sex couples-but. . . it would be a lot better, as a matter of both political theory and public policy, if the state withdrew from the marrying business” [emphasis added].

The idea that the state should be neutral to moral concerns about institutions like marriage is what Sandel calls “bracketing” of moral issues. It assumes human ability to detach oneself from his/ her “stories” or “social and historical roles and statuses.”

In the context of same-sex marriages, the Court will be following this approach if it were to decide in favour of the petitioners only on the basis of equality or privacy. Sandel says “if…social and economic rights are required as a matter of equal respect for persons (only), the question remains why these persons…have a claim on my concern that others do not.”

In other words, citizens who see and value marriage as a heterosexual institution would be asked to recognise same-sex marriages, through their state of course, not as a matter of shared understanding but as “a duty we owe to strangers.”

On the other hand if the matter were to be decided on the basis of “intrinsic value or social importance of the practice” one avoids the alienation that gives rise to fundamentalist tendencies.

This now takes us to the more important question as to whether the Court, or for that matter even a centralised State, is capable of deciding on or resolving moral issues in society.

Sandel cites the example of Massachusetts Supreme Judicial Court’s decision in Goodridge v. Dept. of Public Health (2003) which legalised same-sex marriage not just on grounds of equality and freedom of choice but by pronouncing on the virtues of marriage. In the American context, the Court only had to choose between whether marriage is about “procreation” or “loving relationships”.

In India, the significance of marriage for those who look at it in traditional terms is much more than both. The significance was captured by the Calcutta High Court in 1901 as follows- “it is a ‘union of flesh with flesh, bone with bone’… the union is a sacred tie and subsists even after the death…”

Yale Professor Helen Landemore says “compared to liberal court decisions imposed on a reluctant public, with the potential for backfiring… the most radical and ultimately sustainable changes to have come for gay rights … were forced on parties and electoral assemblies by ad hoc citizens’ assemblies (Ireland) and the pressure of citizens’ initiatives (Finland)” [emphasis added].

It has been noted by scholars that historically Indian society has not shared the same sense of disgust or hatred with which homosexuals were treated in other parts of the world.

Understandably, there were no social rumblings when homosexuality was decriminalised. It reflected the society’s shared values. Can the same be said about homosexual marriage? Have we, like some western societies, accepted “romantic-love” or companionship and nothing else to be the basis of marriage?

Can the honorific value of marriage be sustained without a heterosexual couple? Ideally these questions should be left for citizens’ assemblies or citizens’ initiatives like in Ireland or Finland. In India too one could look for equivalents. Reviving Gandhi’s “little republics” could be a good

starting point.

(The author is an advocate practising in the Madras High Court)

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TAX LAW IN THE SHADOW OF THE HIGHER JUDICIARY

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

June 14, 2023 12:16 am | Updated 02:51 am IST

‘There is an encroachment on legislative functions’ | Photo Credit: Getty Images

India’s law of taxation is built on two central precepts. First, on the idea captured in Article 265 of the Constitution, that a tax may be imposed only with the authority of law. Second, on a principle of sureness, that any levy ought to be clear, consistent, and predictable. Both these precepts emanate out of a larger commitment to the rule of law, in particular to values of legality and certainty.

Upholding these principles requires a commitment not only from the legislature but also from our courts too. But over the course of the last 12 months, there have been instances where the Supreme Court of India has undermined this commitment, by reversing well-reasoned judgments of High Courts, and by virtually enacting into existence taxes that lack legislative support. Two judgments, delivered by Justice M.R. Shah who retired from the Supreme Court on May 15, represent noteworthy examples.

In the more recent of the rulings, in ITO vs Vikram Sujitkumar Bhatia, the question before the Court concerned whether an amendment to a provision of the Income Tax Act, 1961, could have retrospective effect in the absence of legislative mandate.

The provision at stake, Section 153C of the Act, which stipulates the conditions under which a search made on a person’s premises could result in the opening of proceedings against other persons and entities. Before an amendment to the law in 2015, Section 153C allowed the Revenue to proceed against third parties to a search, if material seized (such as money, bullion, jewellery, or books of accounts) “belongs or belong to” a person other than the one who was subject to the search.

At least three different High Courts held that the terms, “belongs or belong to,” ought to be narrowly construed. In their reading, for incriminating material found during a search to serve as a basis for assessing persons alien to the search, that material must not merely relate to, or pertain to, such person but must “belong” to them. Therefore, a mere reference to a person’s name would not by itself satisfy the law. There must be evidence that the material in question is the person’s property.

To overcome these decisions, the law was amended in 2015. Section 153C now stipulated that assessments could be made against third parties to a search, even if the material seized — in

the case of documents and books of accounts — “pertains or pertain to” the person or if information contained in those items “relates” to the person. The question turned to this: would the law apply to searches conducted prior to its enactment?

The amendment was not made expressly retrospective. In any event, as the Gujarat High Court held, it could not be so because such an application would impinge on rights that had vested on persons through the previous stipulation. This reasoning stems out of the idea that even if a law was merely procedural in nature, it would apply retrospectively only if it did not take away any substantive rights conferred on a person. Here, the Court found that the amendment was bringing into the fold of Section 153C a new class of assessees, who were previously excluded.

On April 6, the Supreme Court reversed this verdict. Its reasons for doing so, insofar as they can be gleaned from the judgment, are twofold. One, that the old Section 153C had been replaced by amendment, and the words “belongs or belong to” had been substituted by “pertains or pertain to,” and, therefore, one must presume that the unamended provision never existed in law, not even before the date of the amendment. Two, that the new law is declaratory, in that it seeks to explain an earlier provision, and is hence retrospective.

However, these professed reasons do not add up. Section 153C may have been amended through substitution. But the phrase “belongs to” continues to remain in the provision. What the altered law does is to add an additional stipulation: that even material — in the case of books of accounts and documents — that “pertains or pertain to” a person can serve as a ground for fresh proceedings. Therefore, the amendment by no means asserts what was always the position, but, instead, seeks to expand the law’s domain with an eye to the future. The Court, in holding that it will apply to past searches, has acted not as an interpreter of the law but as a maker of the law.

The judgment in Union of India vs Ashish Agarwal, delivered in May last year, is not dissimilar. Its many ramifications continue to be felt. In it, the Court resuscitated notices of reassessment that had been issued by the Revenue without any sanction of law. In doing so, it not only reversed the Allahabad High Court’s judgment that had been carried to it on appeal but also verdicts rendered by at least seven different High Courts that were not before it. Parties to those cases, numbering in the hundreds and thousands, did not so much as get their audience in court.

The issue at stake in the case was simple. With effect from April 1, 2021, Parliament had enacted a new regime to govern reassessments of completed income-tax proceedings. But, despite the change in law, the Revenue continued to issue notices under a repealed provision, deriving authority, it believed, from executive notifications that extended timelines during the COVID-19-inflicted period. The High Courts declared these notices invalid, but also pointed out that the Income-Tax Department, if it so desired, was at liberty to invoke the new law, if the statute of limitation so permitted.

There is no doubt that the quashing of these notices would have had some effect on the revenue. There would have been cases where limitation had expired, leaving the authorities with no choice but to drop any proposal for reassessment. But if this situation called for mending, it was for the legislature to think of solutions.

Instead, the Court found — although this was not the government’s pleaded case — that the “officers of the Revenue may have been under a bona fide belief that the amendments may not yet have been enforced”. In other words, that state functionaries were ignorant of the law. In the Court’s belief, mistakes of this kind must not be allowed to cost the exchequer. Therefore, the quashed notices were revived, and were deemed to have been issued under the amended law.

Through this, the Court was not only encroaching on legislative functions but was also striving to give life to what were otherwise entirely illegitimate actions. What followed the judgment was an especially bewildering situation, because the notices under the old law were evidently issued keeping in mind the preconditions that that law stipulated — as a result, this has only led to a fresh round of litigation.

What is more, in doing this, the Court also invoked its most infamous power: Article 142 of the Constitution, which allows it to pass orders for “doing complete justice to a cause”. It has previously been held that this power ought not to be applied in breach of statutory law. Yet, here was a case where the Court not only resuscitated actions that lacked any legislative support but also reversed judgments that were simply not on appeal before it.

Article 265 of the Constitution forbids taxation without legislation. But if the Supreme Court is willing to play Parliament, this peremptory promise will remain illusory.

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A CHANGE OF NAME FOR VOTES

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

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

Earlier this month, the Eknath Shinde-led Maharashtra government decided to rename Ahmednagar district as Ahilya Nagar, after the 18th-century warrior queen Ahilya Devi Holkar. In February, it renamed Aurangabad as Chhatrapati Sambhajinagar and Osmanabad as Dharashiv.

This renaming spree that the government has embarked on is a form of majoritarian politics. It suggests an erasure of those parts of history that are associated with Muslim rulers and can be seen as an attempt to make a community feel diminished by erasing its contributions to the nation. Aurangabad was named after Mughal emperor Aurangzeb; Osmanabad derived its name from the Nizam of Hyderabad, Mir Osman Ali Khan; and Ahmednagar is associated with Malik Ahmed Nizam Shah, the founder of the Nizam Shahi dynasty. This trend has also ignited communal unrest. About a week after the decision to rename Ahmednagar, tensions prevailed in Kolhapur following a protest by right-wing outfits over social media messages that reportedly glorified Aurangzeb and the 18th century Mysore ruler, Tipu Sultan.

It was, in fact, the Uddhav Thackeray-led Maha Vikas Aghadi (MVA) government which decided to name Aurangabad and Osmanabad in response to a long-standing demand of the Shiv Sena. This was the last Cabinet decision of the MVA government before it collapsed in June last year. After coming to power, the Shinde-Devendra Fadnavis government scrapped the decision stating that the Uddhav Thackeray-led government lacked a majority and claiming that the decision would face legal hurdles. Its Cabinet cleared the renaming proposal once again, and Aurangabad and Osmanabad were renamed in a way which the government hopes will appeal to its core voter base in the Marathwada region.

Now, by renaming Ahmednagar, which the locals simply refer to as Nagar, the government is aiming to woo the Dhangars, the shepherd community which holds significant electoral influence in western Maharashtra, Marathwada, and parts of northern Maharashtra, by invoking regional pride. Ahilya Devi Holkar, who was born in Ahmednagar's Choundi, belongs to the Dhangar community, which is today the second largest community in the State after the Maratha-Kunbis. There are 15,000-25,000 Dhangar voters in each of the at least seven Lok Sabha and about 40 Assembly constituencies. In high-profile constituencies which are the stronghold of Nationalist Congress Party (NCP) leader Sharad Pawar, including Baramati, Daund, Shirur, Indapur and Sangola, the Dhangars wield substantial voting power. This move aligns with the BJP's 'MADHAV' formula through which it hopes to consolidate the Malis (MA), Dhangars (DHA) and Vanjaras (V) and further expand its presence in western Maharashtra. It hopes to attract the

powerful Other Backward Classes vote bank ahead of the 2024 Lok Sabha and Assembly elections.

In the hope of weakening the NCP's hold on power in the region further, the government also announced that the Baramati Medical College would be renamed as Punyashlok Ahilya Devi Holkar Government Medical College. Mr. Pawar's daughter Supriya Sule represents the Baramati Lok Sabha constituency and his nephew Ajit Pawar is Baramati's MLA. These seats were previously held by Mr. Pawar.

The MVA has been careful about opposing the remaining as it fears that doing so would give the ruling alliance an advantage. It also does not want to seen as engaging in 'Muslim appeasement' politics given the widespread narrative that Muslim rulers were anti-Hindu and brutal.

Meanwhile, the dominant Maratha community, which believes that the Dhangars with the support of the BJP are trying to control power in the State, has opposed the renaming of Ahmednagar. Initially, even the BJP's Revenue Minister Radhakrishna Vikhe Patil and his son Dr. Sujay-Vikhe Patil, who belong to the Maratha community from Ahmednagar, was against the demand.

The renaming decisions have far-reaching implications. They underscore the delicate balance between asserting regional and caste identities, appealing to a specific voter base, and maintaining communal harmony. Whether such name changes actually bring in votes remains to be seen. But ruling parties should ensure inclusivity and unity while navigating sensitive matters like these.

END

Source : www.thehindu.com Date : 2023-06-20

GRASSSROOTS PEACE: ON THE LOCAL BODY ELECTIONS IN WEST BENGAL

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

June 20, 2023 12:20 am | Updated 12:46 am IST

Local body elections in West Bengal scheduled for July 8 have yet again brought political violence in the State to the forefront. Seven persons — they include supporters of the ruling Trinamool Congress and Opposition parties such as the Bharatiya Janata Party, the Congress and Indian Secular Front — have died since the notification of the polls on June 8. The State Election Commission (SEC) and the West Bengal government have approached the Supreme Court of India challenging the Calcutta High Court order of June 15, directing the deployment of central forces in all districts. The State government and the SEC do not have enough resources at their disposal to conduct the mammoth exercise across the State on a single day. Therefore, the deployment of central forces should have been welcomed, particularly when the High Court has directed that the cost of the deployment will be borne by the Centre and not the State government. Elections will be held to nearly 73,897 seats of the three-tier local body structure. In 2013, the SEC itself had sought Supreme Court direction for the deployment of central forces, in stark contrast with its opposition to it now. Violence has been normalised in State politics for decades, and parties in the opposition always seek the deployment of central forces in all elections.

In the 2018 local body polls, there was no deployment of central forces, and in more than one third of the seats, the ruling Trinamool Congress candidates won without contest. Opposition parties were not allowed to put up any candidate in these seats. While the situation is a bit better this time, the Opposition parties have not been able to file nominations in about 50 of the 341 blocks of the State amid reports of the intimidation of candidates. Governor C.V. Ananda Bose visited violence-affected areas at Bhangar and Canning, and Raj Bhavan, Kolkata, has opened a control room where citizens can register their grievances related to the polls. The “peace room”, as the Governor calls it, will forward these complaints to the State government and the SEC. The Governor has turned the spotlight on the deteriorating law and order situation and nudged the SEC and the State government to take complaints of violence seriously. He has also carefully avoided a confrontation with the elected government. West Bengal was among the first States to have a three-tier panchayat system aimed at democratic decentralisation. It is for all the stakeholders including political parties to ensure that the exercise of electing panchayat functionaries does not descend into lawlessness and chaos.

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West Bengal / election / All India Trinamool Congress / Bharatiya Janata Party / Indian National Congress / judiciary (system of justice) / politics / local elections

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Source : www.thehindu.com Date : 2023-06-21

A CHURNING IN ANDHRA PRADESH

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

June 21, 2023 12:15 am | Updated 12:15 am IST

File photo of Amit Shah and Chandrababu Naidu in New Delhi. | Photo Credit: MOORTHY R.V.

The no-holds-barred attack by Union Home Minister Amit Shah on Chief Minister on the Y.S. Jagan Mohan Reddy-led government, at a public meeting in Visakhapatnam, has set the tone for politics in Andhra Pradesh ahead of the 2024 general and Assembly elections. Mr. Shah claimed that Mr. Reddy's government was "ridden with corruption". He accused the government of turning Visakhapatnam into a hub of "antisocial elements" and "drug peddlers".

The general secretary of the YSR Congress Party (YSRCP) demanded that Mr. Shah provide proof to substantiate his allegations. And for the first time since he became Chief Minister, Y.S. Jagan Mohan Reddy indicated at Palanadu, a few days after the Home Minister's attack, that his party may not have the support of the Bharatiya Janata Party (BJP) in the 2024 elections. This has given rise to speculation that the winning combination of the 2014 elections — the BJP, the Telugu Desam Party (TDP) and the Jana Sena Party (JSP) — could be back in the reckoning.

While the three parties performed well in 2014, in 2018 TDP chief Chandrababu Naidu pulled out of the National Democratic Alliance alleging that the Centre did not fulfil its promises regarding special status to Andhra Pradesh. Many believe that this was Mr. Naidu's biggest political blunder. He not only walked out of the alliance, but also launched a tirade against Prime Minister Narendra Modi and Mr. Shah. TDP workers carried black flags when Mr. Modi toured Andhra Pradesh and threw stones at Mr. Shah's convoy when the Home Minister visited Tirupati, thus burning bridges with the BJP.

However, after being routed by Mr. Jagan Reddy in the 2019 elections, Mr. Naidu has been making great efforts to patch up with the BJP. He met Mr. Shah in New Delhi about two weeks ago, before the Home Minister's visit to Visakhapatnam. BJP president J.P. Nadda was also present at the meeting. JSP leader Pawan Kalyan and Mr. Naidu have also met several times in the last one year. All this has led to speculation of a tie-up between the three parties. Some believe that the softening of the BJP's stand towards the TDP could be because of the national party's disastrous performance in Karnataka.

There is also some speculation that the Naidu-Shah meeting was more focused on working out a formula in Telangana, where the contest is more direct between the Bharat Rashtra Samithi (BRS), the Congress which is picking up steam, and the BJP. Andhra Pradesh has 25 seats in the Lok Sabha and Telangana has 17. The BJP is aiming to make inroads into both since, after

Karnataka, the Telugu-speaking States are its best bet in the south.

Compared to Telangana, the role of the BJP in Andhra Pradesh is still not clear, however. Many people have raised the question of the timing of the Union government's doling out of funds to the State government. In the last one month, the Union government has given close to 23,000 crore to the State government under revenue deficit grants and the Polavaram project.

BJP MP G.V.L. Narasimha Rao defended the grant saying it was handed by the Union government and not the BJP. The grant was given under provisions of the Andhra Pradesh Reorganisation Act, he said.

Even if there is an alliance between these three parties, it would face an uphill challenge. Mr. Reddy's schemes are popular with the people. In the latest Budget, he allocated over 54,000 crore for direct benefit transfer schemes, which is about 20% of the total expenditure outlay of 2.79 lakh crore. More importantly, despite the financial crunch and the Opposition raising a hue and cry that the government is funding the scheme by pushing the State into a debt crisis, the Chief Minister has never discontinued his schemes. The beneficiaries of these schemes could therefore be loyal supporters. He also now appears to be addressing the issues of the State government employees. The new Guaranteed Pension Scheme seems to have been received well by the agitating employees.

Meanwhile, the TDP and JSP have started reaching out to the people. TDP leader Nara Lokesh's Yuva Galam padayatra has received a good response in the Rayalaseema region, while Pawan Kalyan's Varahi Yatra has made waves in the East Godavari region. While Mr. Naidu is desperate to revive the past glory of the TDP, the BJP is trying its best to gain some following in the south. Whether the speculation of an alliance becomes reality remains to be seen.

END

Source : www.thehindu.com Date : 2023-06-22

OVERKILL: THE HINDU EDITORIAL ON THE INTERNET SHUTDOWN IN MANIPUR

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

June 22, 2023 12:20 am | Updated 12:20 am IST

The Manipur High Court, on Tuesday, granted limited Internet access in designated places in the State after a petition seeking the restoration of net access. Shutdowns began following the violent conflagration on May 3 and there were extensions of restrictions since then, the last one being an extension order on Wednesday, till June 25. The request made is legitimate as shutdowns have a crippling effect on many an economic activity and livelihoods. Citizens have been unable to access vital services such as e-commerce-related activities, except for those who can get exemptions from the shutdowns with government permission. Violent incidents have occurred in the State since May 3 and relations between Meiteis and Kukis remain tense. But the orders seeking to extend the shutdown cite threats to “law and order” and the role of “anti-social elements” — a euphemism for extremists indulging in violent acts or the posting of violence-promoting material — rather than explicitly seeking to retain these bans because of a public emergency or in the interests of public safety, as required by Section 5(2) of the Telegraph Act, 1885 and Telegraph Rules. The Manipur government also told the High Court that the shutdowns were needed to block websites where inflammatory material could be published, but such a sledgehammer approach is clearly problematic.

The Supreme Court, in Anuradha Bhasin vs Union of India (2020), had held that an indefinite suspension of Internet services was in contravention to the law as freedom of speech and the freedom to carry out commercial work using the Internet was a fundamental right. It also held that such suspensions should adhere to the “principle of proportionality and must not extend beyond necessary duration”. Continuing a dragnet suspension in Manipur in this fashion suggests that the government is merely using the shutdown as a substitute for enforcing law and order — another ploy that the Court had come down heavily upon in this judgment. The situation in Manipur can be tackled effectively by a regime that seeks to restore the confidence of all stakeholders, engages with civil society actors in restoring inter-community dialogue, isolates the extremists and pursues a step-by-step approach towards restoring peace and normalcy. But with a beleaguered Chief Minister at the helm — a leader who has lost the confidence of many of his colleagues — and the intransigence of many community representatives and their inability to rise above their ethnic identities to pursue peace, sporadic violence continues even as those displaced are unable to return home. This, however, does not lend to the continuation of the Internet shutdown that has been in place for over a month-and-a-half, and which must end.

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Manipur / internet / judiciary (system of justice) / unrest, conflicts and war

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Source : www.thehindu.com Date : 2023-06-23

UNEDIFYING ROW: THE HINDU EDITORIAL ON PANCHAYAT POLLS IN WEST BENGAL AND SECURITY

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

June 23, 2023 12:20 am | Updated 09:31 am IST

The controversy in West Bengal in the matter of deployment of central paramilitary forces ahead of the panchayat elections to be held on July 8 is quite unedifying. The State Election Commission (SEC) initially appeared reluctant to heed calls by Opposition parties to bring in central forces to boost security arrangements. A perceived delay in identifying sensitive areas resulted in the Calcutta High Court ordering the poll body to ask for and deploy central forces. In the ordinary course, the deployment of central forces during local body elections, conducted under the watch of the SEC, would be at the State government's discretion. However, it is an unfortunate reality that West Bengal frequently witnesses poll-related violence. Even in the current poll process, eight people have died, and there are reports of prospective candidates being prevented from filing their nominations for some panchayats. In these circumstances, it would have been in the fitness of things for the SEC to requisition central forces on its own, even if the State government had some grievance over its discretion being overruled by the High Court order. However, the SEC, which ought to have had no misgivings about it, joined the government in approaching the Supreme Court of India against the order. The Court affirmed the High Court's directives, noting that the core issue was free and fair elections. Moreover, the whole State was going to vote on a single day for nearly 74,000 seats, and that given the high number of seats and polling booths, the directions were justified.

In yet another unfortunate turn, the SEC responded to the apex court's order by requisitioning central forces in 22 districts (one company each), in a move that showed pique and resentment rather than compliance. The High Court has once again intervened, noting that the requisitioned number was thoroughly inadequate and directed that more forces, not less than the size of the forces used during the 2013 panchayat polls be sought, when as many as 1.05 lakh police personnel and 82,000 central personnel were deployed. The controversy flags the issue of political violence, which is quite endemic to West Bengal. Each election sets off a round of violence and demands for central forces. The federal principle that law and order is under the State's domain is often strained and tested at such times. The High Court had ordered a CBI investigation into incidents of serious violence after the last Assembly election in 2021. A truly independent election watchdog and a sense of responsibility among all political parties are necessary to preserve the purity of the election process.

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Source : www.thehindu.com Date : 2023-06-24

STRIKE A FINE BALANCE, HAVE A JUST CIVIL CODE

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

June 24, 2023 12:16 am | Updated 12:47 am IST

‘As the Commission proposes an overhauling secularisation of various socio-religious-cultural practices that have been the mainstay of thousands of religious and ethnic communities since times immemorial, the path ahead is not going to be free from hurdles’ | Photo Credit: Getty Images

On June 14, the Law Commission of India decided to solicit views and proposals from the public about the Uniform Civil Code (UCC). After a hiatus of just five years, when the Commission had concluded that the ‘UCC is neither necessary nor desirable’, the move now is one that keeps the pot boiling on one of India’s most ideologically as well as politically rivalled issue. Though we believe that the enactment of the UCC in piecemeal manner would be in tune with the spirit of Article 44, the attempt here is to invite attention to one particular consideration that must weigh with the Commission as it undertakes this exercise de novo.

The question of personal laws is basically the question of personal and religious autonomy versus the state’s authority to reform familial relations. Since each religious group has cultural autonomy, it is thus being argued that the community should itself come forward to seek reforms. This is the justification for the adoption of internal law reform or voluntary UCC. In fact, the Special Marriage Act, 1954 and the Indian Succession Act, 1925 are nothing but examples of voluntary adoption of the UCC though the recently enacted love jihad laws by prohibiting inter-faith marriages basically violate the spirit of Special Marriage Act.

Editorial | **Code red: On the 22nd Law Commission and a uniform civil code**

There are also regional differences, i.e. Kerala had abolished the Hindu Joint Family in 1975; Muslim marriage and divorces are to be registered in Bengal, Bihar, Odisha, Jharkhand under the 1876 law, and in Assam under 1935 law, and adoption was permissible to Kashmiri Muslims.

At present, not just Muslims but even Hindus, Jains, Buddhists, Sikhs, Parsis, and Jews are governed by their own personal laws. Accordingly, believe it or not, it is the religious identity that determines which personal law would apply to a group of individuals. Even reformed Hindu Personal Law under the Hindu Marriage Act, 1955 does insist on solemnisation of marriage, through saptapadi (seven steps around fire) and datta (invocation before fire). Section 7(2) of the Act, just like Manusmriti (8.227), provides that marriage is completed on the seventh step. Sapinda relationship, adoption and Hindu Joint Family rules too are based on the Hindu Personal Law.

Surprisingly when two Hindus marry under the Special Marriage Act, 1954 (Section 21A inserted in 1976), they continue to be governed by Hindu Personal Law, but if two Muslims marry under this legislation, the Muslim Personal Law (MPL) would no longer govern them. Interestingly, a person who renounces Hinduism too continues to be governed by the Hindu Personal Law.

The Constitution was not the starting point but a mere culmination of India's long-standing integrative traditions. In addition to the provisions that outlaw discrimination in all its forms, the Indian Constitution's commitment to cultural accommodation is visible through a near-absolute fundamental right in Article 29(1) dedicated exclusively to conserving the distinctive culture of all citizens. However, do Muslims of India have the courage to argue that polygamy or arbitrary unilateral divorce even in anger or while in an intoxicated state could be considered a part of their culture?

That said, the Commission must bear in its recommendation that for a diverse and multicultural polity such as India, the proposed UCC must be emblematic of India's 'mosaic model' of multiculturalism. The logic is invariably obvious — a homogenising lithification of identities must not become a mirage for flourishing diversity (something that has consistently remained peculiar to the American model of multiculturalism). After all, unity is far more important than uniformity. The British brought homogeneity amongst Hindus and Muslims by grossly undermining heterogeneity within the two religious communities.

Under the Indian Constitution, the right to cultural autonomy defends the Indian model of multiculturalism. Prominent scholars on multiculturalism such as Rochana Bajpai suggest that the Indian Constitution offers two major approaches with respect to accommodation of difference — integrationist and restricted multicultural. While the affirmative action policies largely land in the first approach's camp, for Ms. Bajpai, "state assistance to minority cultures has been seen as an illegitimate concession […]" and is often termed as 'appeasement of minorities'.

This, as Ms. Bajpai furthers, leaves cultural difference without any robust constitutional normative underpinnings. In short, it is through these two approaches that the Constitution makes way for cultural accommodation and a celebration of group differences. Accordingly, the 21st Law Commission (2015-18) had boldly favoured equality between men and women in communities rather than aiming for equality between communities. A just code should be the primary goal as just laws are more important than a mere one uniform law.

Having this discussion as the backdrop, India's tryst with preserving its multicultural diversity is often found at the crossroads with values such as secularism. Despite secularism being a fundamental tenet governing the Indian polity, India decided not to adopt the French model of laïcité, which strictly prohibits bearing any religious outfit or marker in public; that considers religion in public as a threat (and not a prominent promoter) to the nation's secular fabric — thus pushing it within only the four walls of the domestic household. Indian society, therefore, 'accommodates' and not just 'tolerates' the wide array of group and ethnic differences.

When groups claim and effectuate their multi-ethnic traditions without impinging on the rights and liberties of their fellow citizens, their traditions and values acquire the status of social mores for they fulfil a much broader purpose of social and national integration.

However, a claim of such broad nature invites limitations inherent — in the name of personal laws and practices, what deserves legal protection and promotion and what does not. Right to cultural-relativism cannot justify continuation of unjust and discriminatory personal laws. Such provisions of the personal laws must be made consistent with substantive equality and gender justice goals espoused in the Constitution.

Simultaneously, we must understand that when a community feels threatened in any way, whether rightly or wrongly so, the collective esteem of its members becomes woven to the community, and community allegiance becomes much stronger. Therefore, one hopes that the Law Commission of India would not contribute to the rise of reactive culturalism amongst different communities in India, including Muslims. The Muslim community too must understand that the MPL and Islam are not one and the same. The MPL is a jurist given law and is not entirely divine. In fact, it is more appropriate to call it Anglo-Muhammadan law that was derived in certain matters from the erroneously translated secondary sources rather than the Koran and Sunna of the Prophet. British courts treated juristic opinions in the MPL on a par with statutory laws enacted by the legislature and by insisting on the British doctrine of precedent, they further brought in a lot of rigidity in the MPL. If MPL reforms that rely on inter-school borrowing could be accepted by the Ulema way back in 1939, why cannot this be done today? Let the Muslim clergy come forward and lead the MPL reform process by identifying the discriminatory and oppressive issues and adopt the views of progressive jurists.

As the Commission proposes an overhauling secularisation of various socio-religious-cultural practices that have been the mainstay of thousands of religious and ethnic communities since times immemorial, the path ahead is not going to be free from hurdles. In the words of political philosopher Iris Young, as the value of social difference is more relational and is itself a product of social processes, we believe that it will be incumbent upon the Commission to strike a fine balance as it should aim to eliminate only those practices that do not meet the benchmarks set by the Constitution.

Faizan Mustafa is an expert in constitutional law. Anant Sangal is an advocate practising law before the Supreme Court of India

Source : www.thehindu.com Date : 2023-06-26

THE DIVIDED HOUSE OF JACS IN TELANGANA

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

June 26, 2023 12:15 am | Updated 01:40 am IST

Warangal JAC chairman T. Papi Reddy, who went on to head the Telangana State Council of Higher Education, is reportedly set to join the Congress. File | Photo Credit: The Hindu

The Joint Action Committees (JACs) which fought for the realisation of Statehood for Telangana and then went into a slumber once the State was formed are now regrouping.

The JACs were headed by senior professors from various universities and student leaders. During the movement, between 2009 and 2014, they were largely united in their mission. But today, they are divided. While some of them have been gearing up to take on the Bharat Rashtra Samiti (BRS) government, which they say has failed Telangana, a few others have been supporting the government and highlighting its achievements of the last nine years. The Telangana government celebrated State formation day for 21 days beginning June 2 in a big way.

Recently, a group of former JAC heads met informally and said that anger against the government has to be channelised properly, as was the case during the agitation for statehood. They plan to invite all the big players of the movement days, including student JAC leaders from Osmania University and Kakatiya University, which were the epicentres of the agitation, and conduct an open session. They plan to regroup in order to provide ‘intellectual’ support to the opposition parties. Prominent among them are Warangal JAC chairman, T. Papi Reddy, and Osmania University Students JAC leader, Pidamarthi Ravi, who are reportedly set to join the Congress. Both of them were initially patronised by the government: Mr. Reddy went on to head the Telangana State Council of Higher Education, while Mr. Ravi fought the Assembly elections on a Telangana Rashtra Samithi (now BRS) ticket. He lost, but he was made the Chairman of the Telangana Scheduled Castes Cooperative Development Corporation.

There is also reportedly pressure on M. Kodandaram to reactivate the groups that enjoyed mass support during the movement. Mr. Kodandaram was Chairman of the all-party Telangana JAC, which was the umbrella organisation for the JACs from the village to the State level. Each District JAC played an active role in mobilising people’s support during the movement.

Those who are trying to regroup argue that they are not trying to revive the JACs, but play a non-political role by raising societal issues which the BRS has neglected. They argue that the BRS has misused its power and killed the democratic spirit in Telangana and is also busy promoting family rule. They see the government as oppressive and say that it has ignored the

student community. They believe that as a group, they have the capacity to negate the narratives created by the BRS government on good governance.

On the other hand, several intellectuals and journalists also support the government. Ghanta Chakrapani, a senior journalist who countered the pro-united Andhra Pradesh forces with his incisive analysis, as well as a few employee union leaders support the BRS government. Professor Chakrapani was made the Chairman of the Telangana State Public Service Commission when the new State was born. Some of the other JAC heads went on to become Vice Chancellors or occupy political positions. Though these people have not declared officially that they favour the government, the fact that they have been highlighting Telangana's development achievements on various platforms could be an indication of their stand.

Many JAC leaders have had an unpredictable relationship with Chief Minister K. Chandrashekhar Rao. While some of them supported him initially, they later became his worst critics, while some others have maintained a distance from him.

As Telangana gears up for the Assembly elections, which are scheduled to be held at the end of this year, it remains to be seen how this political churning could affect the BRS's prospects. If some of these anti-BRS forces work efficiently, the direct beneficiary would be the Congress. This is because first, it was the United Progressive Alliance government which created a separate Telangana and second, the BJP would likely be the last party that these intellectuals would support. The outcome of the recent Karnataka Assembly elections has also given these groups a much-needed push to dethrone the BRS government and bring to power an alternative party.

Source : www.thehindu.com Date : 2023-06-26

OUTREACH TO DIASPORA AND STATESMANSHIP

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

June 26, 2023 12:08 am | Updated 01:51 am IST

‘Among the Indian diaspora, Tamils constitute a substantial number’ | Photo Credit: B. JOTHI RAMALINGAM

In a speech while addressing the Tamil diaspora in Tokyo in the course of his overseas tour in May 2023, to Singapore and Japan, to attract investments to the State, the Tamil Nadu Chief Minister, M.K. Stalin, had said that the Government of Tamil Nadu would protect the Tamil diaspora that has spread far and wide in search of education, business, and employment. He added that protecting the Tamil language meant protecting the Tamil community. He held forth the promise that his government and the ruling Dravida Munnetra Kazhagam (DMK) would extend all support to the Tamil community.

Among the Indian diaspora, Tamils constitute a substantial number. They form the overwhelming majority of the Indian population in Malaysia, Singapore, and Sri Lanka, are in good numbers in Myanmar, Mauritius, South Africa, the Seychelles, the Re-Union Islands, Fiji, Trinidad and Tobago, Guyana, Suriname, Australia, New Zealand, the Gulf countries, the United States and Canada, Britain and the European countries.

These dynamic groups have three identities — first, the Tamil identity; second, the Indian identity, and third, the identity of the countries in which they have settled. Equally interesting is the phenomenon of the diaspora of the diaspora. From Fiji, Malaysia, and Singapore, the Indian diaspora is migrating to greener pastures such as Australia, Canada, and the U.S. Bharati Mukherjee, the well-known diasporic writer, was apt in saying: “I am a woman with a series of countries. It is necessary for me to put down roots wherever I land and wherever I choose to stay.”

It would be simplistic and naïve to assume that the hopes that they entertain and the problems that they face are identical. It is closely related to the nature of their migration, their numerical numbers, their educational and professional attainments, their economic clout, and, above all, the majority-minority syndrome in the host countries. The Tamil diaspora has excelled in politics, economics, literature, the fine arts, sports, and science. A few names that shine include Dr. Chandrasekhar, Monty Naicker, Sambandan, Janaki Thevar, T.S. Maniam, Saumiyamoorthy Thondaman, S.R. Nathan, Muthiah Muralitharan, Nagamattoo, Indira Nooyi, Sundar Pichai, Raghuram Rajan and Kamala Harris.

Mr. Stalin’s speech is a reminder of two statements made by Jawaharlal Nehru, in Malaya in

March 1946 — “When India becomes free, her hands will be long and powerful to protect each and every one of her children abroad.” And, “Indians abroad must remain united and guard their rights and uphold their heads proudly as Indians — children of a country with a great past and greater future.”

But Nehru’s hopes were soon shattered. The first legislative enactment of Ceylon, soon after independence, was to render the Indian Tamils, who were taken to Ceylon under the protective umbrella of the British Government, to provide labour in the tea plantations. Nehru’s principled stand was that all those who considered Ceylon to be their home and have stayed there for long should be conferred citizenship. Ceylon argued that it was its sovereign right to introduce citizenship regulations.

The Burmese government never granted citizenship to thousands of Indian Tamils and expelled them. On the eve of their departure, the Burmese currency was demonetised. The women could not even bring their mangalyasutra with them. As far as neighbouring countries are concerned, bilateral relations have two dimensions.

The first is to improve relations with governments, politically, economically, and culturally. The second is to protect and foster the interests of Indian minority groups. An overview of India’s policy towards Sri Lanka shows that to improve political relations, New Delhi, on some occasions, was willing to sacrifice the interests of the Indian diaspora. The Sirimavo-Shastri Pact of October 1964 is an example of betrayal. New Delhi adopted the policy of give and take and converted the Indian Tamil community into merchandise to be divided between the two countries. It must be highlighted that all important leaders of the Madras Presidency, Rajagopalachari, Kamaraj Nadar, C.N. Annadurai, P. Ramamurti, and Krishna Menon were opposed to the agreement.

Mr. Stalin has highlighted the necessity to protect and promote the Tamil language. But the sad fact remains is that in many countries, the Tamil community has forgotten the Tamil language, one of the key elements of Tamil culture.

The policy towards the Indian diaspora comes under the exclusive jurisdiction of the central government. Even then, State governments can influence policies by building public opinion. What is essential, in the present context, is camaraderie and friendship between the Narendra Modi government and the DMK government.

The Citizenship (Amendment) Act (CAA), could have used the term ‘persecuted minorities’. The CAA also does not include Sri Lanka, where ethnic fratricide has compelled many Tamils to come to Tamil Nadu as refugees. New Delhi terms Sri Lankan Tamil refugees as illegal immigrants and argues that they must go back to Sri Lanka.

Instead of trying to have cordial relations with the central government, a policy of confrontation by Tamil Nadu would be self-defeating. What the refugees want is Indian citizenship. All of them fulfil the residential qualifications laid down in the Indian Citizenship Act. Indian Tamil refugees, who number 29,500, are stateless. What is more, Sri Lankan Tamil refugees are willing to surrender their Sri Lankan citizenship to get Indian citizenship.

The need of the hour is for the state and central government to come together and arrive at an amicable solution. This calls for statesmanship, not political opportunism.

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A ROW OVER RICE IN KARNATAKA

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

June 28, 2023 12:15 am | Updated 01:59 am IST

Karnataka Transport Minister Ramalinga Reddy and Congress leaders stage a protest in Bengaluru on June 20, 2023 against the Central government's refusal to release rice to implement the State's Anna Bhagya scheme. | Photo Credit: ANI

In just over a month since the Siddaramaiah-led Congress government came to power in Karnataka, a row over "denial" of rice by the Centre for Anna Bhagya, one of the State government's flagship programmes to be launched on July 1, has kept the political pot boiling.

The Centre's flip-flop over the supply of more rice to the State has not only led to a slugfest between the Congress and BJP, but has likely derailed the launch. Besides, the cost of implementation, estimated to be around 10,000 crore, is likely to go up.

Karnataka is now looking at other sources to procure 2.29 lakh metric tonnes of rice per month. This is the amount it requires to provide five kg of free rice per person to over 4.42 crore intended beneficiaries or 1.19 crore households, who are BPL (below poverty line) and Antyodaya card-holders in the State. The five kg of rice under Anna Bhagya is over and above the five kg that is given by the Centre under the National Food Security Act to the poorest of the poor.

Under pressure from the Opposition parties, which have started questioning the delay in implementing the five pre-poll guarantees of the Congress, the Karnataka government scheduled the launch of these schemes. Earlier in May, the first Cabinet had given in-principle approval to implement them. One of the five guarantees, Anna Bhagya, is the only scheme for which the Congress government is dependent on the BJP government at the Centre. Its launch is now uncertain owing to the unavailability of rice and the high cost of implementation.

Just about a fortnight before the launch, the Food Corporation of India (FCI), which had agreed to supply to the Karnataka government the required quantity, refused to do so a day later, saying it had "to maintain sufficient stocks for market intervention". While the State has bought rice from the FCI under the open market sale scheme (OMSS-Domestic) for supply to the Anna Bhagya scheme earlier, when 7 kg of rice per person was given, the Centre barred States from participating in the OMSS-D in mid-June as part of anti-inflationary measures.

Stung by the response, the government, which was hoping to get a kg of rice at 36.60 from the FCI, cried foul and said it was not asking for rice free of cost. Chief Minister Siddaramaiah

termed the decision as “anti -poor and based on the politics of hate”, and accused the Centre of conspiring to “scuttle” Anna Bhagya. His Cabinet colleagues also attacked the BJP for denying rice to a pro-poor programme. Simultaneously, Mr. Siddaramaiah also appealed to Home Minister Amit Shah to intervene and ensure supply to Karnataka. This too, however, failed to break the deadlock as the Centre categorically informed Karnataka that rice could not be supplied, igniting another round of heated exchanges. Karnataka Food and Civil Supplies Minister K.H. Muniyappa said that the Centre’s requirement for national supply was 135 lakh metric tonnes of rice whereas it was sitting on a stock of 262 lakh metric tonnes.

While the Centre has refused to sell rice to Karnataka, the BJP’s State unit, which seems to be in a turmoil after the electoral drubbing, is mounting pressure on the Congress government. It has said it would begin protests if anything less than 10 kg of free rice is supplied, or the launch of the scheme is delayed. The BJP has accused the Congress government of wilfully delaying the launch and trying to shift the blame on the Centre. It has urged the government to either purchase rice from the market or transfer cash to the beneficiaries. The Janata Dal (Secular) has criticised the Congress for being ill prepared before such a big announcement was made.

Meanwhile, Karnataka’s search for rice in Andhra Pradesh, Telangana, Chhattisgarh, Punjab and West Bengal did not yield the desired results due to factors such as high cost or non-availability. It has so far refrained from speaking to the Karnataka Rice Millers Association and therefore steered clear of any potential allegations of corruption in procurement. The State is now looking at national cooperative agencies such as NAFED, NCCF and Kendriya Bhandar that have indicated their readiness to supply rice. However, the cost remains a concern as State will have to incur additional money on transportation, which will in turn increase the overall cost of implementing the scheme. Today’s Cabinet meeting will be crucial as decisions on the date of launch and cost of implementation of the project will be taken.

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MANIFESTLY ARBITRARY, CLEARLY UNCONSTITUTIONAL

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

June 29, 2023 12:16 am | Updated 01:08 am IST

A rally by the Aam Aadmi Party in protest against the central government's ordinance, in New Delhi | Photo Credit: ANI

In 2015, soon after the Aam Aadmi Party won the Delhi Legislative Assembly elections by a significant margin, the central government issued a notification taking control over services in the National Capital Territory (NCT). This sparked an eight-year long legal battle between the Delhi government and the central government, involving four rounds of litigation before the Supreme Court of India. In May 2023, the Court ruled decisively in favour of the Delhi government. However, rather than being the end of the battle, the Court's decision turned out to be only another pit stop. Within days, the central government, acting through the President of India, issued an ordinance amending the Government of National Capital Territory of Delhi Act of 1991. Through this ordinance, the central government sought to undo the Court's judgment: it explicitly deprived the Delhi Legislative Assembly from enacting laws pertaining to services within the NCT, and, instead, set up a parallel body, comprising the Chief Minister and two bureaucrats, who would be responsible for taking service-related decisions with respect to Delhi.

Shorn of legalese, and in effect, the Delhi Services Ordinance takes away the control of services from the elected government of Delhi, and hands it back to the central government. A close look at the ordinance reveals two justifications offered by the central government. At the level of policy, the central government argues that Delhi's status as the national capital requires a "balancing" of interests between the elected Delhi government, and the government at the Centre. At the level of law, it is argued that Article 239AA of the Constitution (which encodes Delhi's "special status") expressly authorises Parliament to pass laws with respect to fields that are normally within the exclusive competence of the States. One of these fields is that of "services".

Both these arguments, however, miss the mark. In particular, they cannot paper over the major constitutional flaw with the Delhi Services Ordinance, i.e., that the ordinance violates and undermines core principles of democracy, representative governance, and a responsive administration.

To understand how, let us begin with first principles. Any functioning modern polity requires the performance of a vast range of daily administrative functions, which must be coordinated at

multiple levels. This task is performed by the body that we colloquially call “the Services.” While elected representatives are responsible for formulating policy and shaping vision when it comes to crucial issues such as health or education, it is the services that are responsible for implementing both vision and policy, in concrete terms.

Therefore, the question of who the services are responsible to — or, who they answer to — becomes crucial. In other words, whatever policy or vision that elected legislators may formulate, whether this is actually implemented — and what is actually implemented — depends on who the services report to, and who has power over mundane issues such as transfers, postings, and enforcing discipline.

For this reason, the default position has always been that, unless expressly provided otherwise — it is the directly elected government that should have control over services. This ensures that the representatives whom the people elect upon a certain manifesto, actually have the ability to implement the policies and promises on the basis of which they have been elected.

In its judgment in May 2023, the Court explicitly recognised this by formulating the concept of the “triple chain of accountability”. The triple chain of accountability is integral to representative democracy and proceeds as follows: civil servants are accountable to the cabinet. The cabinet is accountable to the legislature, or the Legislative Assembly. And the Legislative Assembly is (periodically) accountable to the electorate. Any action that severs this “triple chain of accountability” fundamentally undermines the core constitutional principle of representative government, which is at the bedrock of our democracy.

The Court’s idea of the “triple chain of accountability” is evident in the constitutional provisions relating to the status of Delhi, and demonstrates why the central government’s defence of the ordinance cannot stand. Delhi’s “special status” — which flows from it being the capital of the country — is already recognised in Article 239AA, in many distinct ways. For example, Article 239AA explicitly deprives Delhi’s Legislative Assembly — and, by extension, the Delhi government — from legislating (or taking executive action) under three fields that are otherwise reserved for the States: public order, land, and the police.

In other words, by not giving to the Delhi government what all other State governments enjoy, Article 239AA already sets out the balance between the interests of representative governance, and national interest in the national capital.

Crucially — and this was a significant factor in the Court’s judgment — Article 239AA does not take away services from the purview and jurisdiction of the Delhi Assembly and the Delhi government. In other words, the very structure of Article 239AA is designed to preserve the triple chain of accountability, where Delhi’s bureaucrats shall be accountable to Delhi’s government, Delhi’s government will be accountable to Delhi’s legislature, and Delhi’s legislature will be accountable to the people of Delhi.

The Delhi Services Ordinance, however, severs this triple chain of accountability by taking away the entire category of services from the jurisdiction of the Delhi government, and, in effect, placing it under the control of the central government.

Now, it is of course true that another feature of the balance that is encoded within Article 239AA is that it grants to Parliament to pass laws, with respect to Delhi, under any of the fields that are otherwise reserved to the States (one of which is “services”). The purpose of this is to maintain a degree of flexibility: while public order, land, and police have been removed from the sphere of the Delhi government entirely, unforeseeable circumstances might arise requiring Parliament to pass specific legislation with respect to other fields as well.

The Delhi Services Ordinance, however, does not do that: instead of responding to any specific circumstance, it takes away the Delhi government's power over services wholesale and in all circumstances. In other words, it tries to take, for the central government, what the Constitution expressly denied: exclusive power over services. Indeed, notably, the ordinance articulates no specific or concrete reason why it has been enacted, other than the need to "balance" interests; this, as we have seen, is illogical, as that balancing has already been achieved within the Constitution.

It can, therefore, be seen that the Delhi Services Ordinance undermines the principles of representative democracy and responsible governance, which are the pillars of our constitutional order. It is also manifestly arbitrary, as it lacks any determining principle that justifies what is, in effect, a wholesale transfer of power from Delhi to the Centre. For these reasons, in the opinion of this writer, it is clearly unconstitutional. It only remains to be seen what the outcome will be when the Supreme Court is approached for the fifth time, to adjudicate this seemingly endless battle.

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