Source : www.thehindu.com Date : 2019-03-02

‘J&K ORDINANCE CLEARED BY UNION CABINET DOESN’T TINKER WITH 35A OR 370’

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

The Union Cabinet on Thursday approved the Jammu and Kashmir Reservation (Amendment) Ordinance, 2019 that will pave the way to extend reservation in jobs, promotions and education to people living 10 km from the International Border (IB) in Jammu. Earlier the benefits were only reserved for people living 10 km beyond the Line of Control (LoC) and affected by shelling and firing from across the border.

The proposal to this effect came from the Jammu and Kashmir administration, which is at present under President’s rule. J&K Governor Satyapal Malik told *The Hindu* that the ordinance in no way affected the rights of people of the State nor did it tinker with Article 35-A, which provides special rights and privileges to permanent residents of J&K. The 740 km LoC in J&K is under the operational control of the Army and 192 km IB in Jammu is manned by the BSF.

“People living along the IB in Jammu live under similar conditions as those along the LoC. They also face continuous shelling and firing from across the border. While the population along the LoC was getting reservation benefits, those along the IB were not. Through this ordinance the anomaly has been corrected. It has nothing to do with altering 35A or Article 370,” Mr. Malik said.

He said since the State was under President’s rule, the ordinance had to be cleared by the Centre. An ordinance to implement the 10% reservation quota for the economically weaker sections, as passed by the Parliament earlier this year, was also cleared by the President, he said.

A statement by the Press Information Bureau said the J&K Reservation Act, 2004 and the 2005 Rules provide for vertical reservation in direct recruitment, promotions and admission in different professional courses to various categories — Scheduled Castes, Scheduled Tribes, Socially and Educationally Backward Classes (Residents of Backward Area, Residents of Areas adjoining Actual LoC and Weak and Under Privileged Classes (Social Castes) along with horizontal reservation to the ex-serviceman and physically challenged Persons.

“However, the reservation benefits are not extended to the persons residing in the areas adjoining IB. Due to continuous cross border tensions, persons living alongside the IB suffer from socio-economic and educational backwardness. Shelling from across the border often compels these residents to move to safer places and is adversely impacting their education as Educational Institutions remain closed for long periods,” the statement said.

END

Source : www.thehindu.com Date : 2019-03-07

THE HINDU EXPLAINS

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

A view of Election Commission of India in New Delhi. | Photo Credit: Sushil Kumar Verma

The model code refers to a set of norms laid down by the Election Commission of India, with the consensus of political parties. It is not statutory. It spells out the dos and don'ts for elections. Political parties, candidates and polling agents are expected to observe the norms, on matters ranging from the content of election manifestos, speeches and processions, to general conduct, so that free and fair elections take place.

The EC traces its introduction to the 1960 Assembly elections in Kerala. During simultaneous polls to the Lok Sabha and Assemblies in several States in 1962, the EC circulated the code to all recognised parties, which followed it "by and large". In October 1979, the EC came up with a comprehensive code that saw further changes after consultations with parties.

The code comes into force on the announcement of the poll schedule and remains operational till the process is concluded, as provided in the notification. It is also applicable to a "caretaker" government on premature dissolution of a State Assembly, as was the case in Telangana.

The EC ensures that ruling parties at the Centre and in States adhere to the code, as part of its mandate to conduct free and fair elections under Article 324 of the Constitution. In case of electoral offences, malpractices and corrupt practices like inducements to voters, bribery, intimidation or any undue influence, the EC takes action against violators. Anyone can report the violations to the EC or approach the court. The EC has devised several mechanisms to take note of the offences, which include joint task forces of enforcement agencies and flying squads. The latest is the introduction of the cVIGIL mobile app through which audio-visual evidence of malpractices can be reported.

Any activity aggravating existing differences or creating mutual hatred or causing tension between different castes and communities, religious or linguistic, is a corrupt practice under the Representation of the People Act. Making an appeal to caste or communal feelings to secure votes and using places of worship for campaigning are offences under the Act. Bribery to voters is both a corrupt practice and an electoral offence under the Act and Section 171B of the Indian Penal Code. Intimidation of voters is also an electoral offence, while impersonating them is punishable under the IPC. Serving or distributing liquor on election day and during the 48 hours preceding it is an electoral offence. Holding public meetings during the 48-hour period ending with the hour fixed for the closing of the poll is also an offence.

According to the EC, the code states that the party in power — whether at the Centre or in the States — should ensure that it does not use its official position for campaigning. Ministers and other government authorities cannot announce financial grants in any form. No project or scheme which may have the effect of influencing the voter in favour of the party in power can be announced, and Ministers cannot use official machinery for campaign purposes.

India can take up its fight against terrorism at the United Nations Security Council in various ways

END

Source : www.thehindu.com Date : 2019-03-08

PROBING THE PRESS

Relevant for: Indian Polity | Topic: Separation of powers between various organs

The essential distinction between public interest and the interest of the government of the day seems to have been lost on the Attorney General. K.K. Venugopal's claim that documents pertaining to the purchase of Rafale jets published by the media, including this newspaper, have been "stolen" amounts to a definitive admission that they are genuine. The documentary evidence published so far indicates that "parallel parleys" held at the behest of the Prime Minister's Office undermined the Indian Negotiating Team's discussions with the French side; that internal questions had been raised about the absence of bank guarantees to hedge against possible default by the vendor; and that this had an adverse effect on the pricing of the 36 jets to be bought in fly-away condition. Few can doubt that these revelations advance the public interest, and have no impact on national security. The publication of the documents and news reports based on them constitute the legitimate exercise of the freedom of the press. The threat of a criminal investigation under the Official Secrets Act, 1923 (OSA) is disappointing, if not downright perverse. The government is also on weak legal ground when it claims the court should not rely on "stolen" documents while hearing petitions seeking a review of its judgment declining a probe into the Rafale deal. As the Bench, headed by Chief Justice of India Ranjan Gogoi, pointed out, the manner in which a document has been procured is immaterial, if it is relevant to an adjudication. As one of the judges asked, can the government seek shelter behind the notion of national security if a corrupt practice had indeed taken place?

All you need to know about the Official Secrets Act

It is to the credit of successive governments that the OSA has rarely been used against the press. The law primarily targets officials entrusted with secret documents, codes and other material, but Section 5 criminalises voluntarily receiving and possessing such documents, if given to them in contravention of the Act. In a limited examination of this section, the Law Commission observed in a 1971 report that its wording was quite wide. However, it left it to the government to decide against prosecution, if the information leak did not materially affect the state's interest. There is undoubtedly a case for distinguishing between an act that helps the enemy or affects national security, and one that advances legitimate public interest. In times when information freedom is seen as salutary for democracy, laws such as the OSA should yield to the moral imperative behind the Right to Information Act. This reasoning is embedded in Section 8(2) of the RTI Act, which says that notwithstanding the provisions of the OSA, "a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests." The government should refrain from using its secrecy laws to contend with embarrassing media revelations. It would do well instead to respond responsibly to questions thrown up by the revelations.

END

Source : www.thehindu.com Date : 2019-03-08

THE IMPERIAL CABINET AND AN ACQUIESCENT COURT

Relevant for: Indian Polity | Topic: Separation of powers between various organs

In the last six months, the Supreme Court has frequently found itself in the headlines. In September, it handed down four landmark judgments on fundamental rights: decriminalising same-sex relations and adultery, opening up Sabarimala to women of all ages, and (partially) upholding Aadhaar. And soon after that, the court was in the eye of a political storm. Its Rafale and Central Bureau of Investigation judgments were subjected to intense scrutiny, and continue to be debated.

What exactly is a money bill?

After the dust has settled, however, and these blockbuster cases consigned to memory, the most important legacy of the 2018-19 Supreme Court may lie elsewhere: in two decisions that have attracted less attention. These are the court's findings on the legal status of "money bills" (a part of its Aadhaar judgment), and its judgment on the distribution of power between the Central government and the government of Delhi. These two decisions were about constitutional structure: about the balance of power between the different organs of the state, the federal character of the Republic, and fundamental questions of democratic accountability.

We are often tempted to think that our rights and freedoms depend upon the Constitution's fundamental rights chapter, and the judiciary's willingness to enforce it against the state. There are other important ways, however, in which a Constitution guarantees freedom. It does so, also, by dividing and distributing political power between state organs in order to avoid concentration of authority, and to ensure that these different organs act as checks and balances upon each other. The surest dam against totalitarianism is to guarantee that no one stream of authority becomes powerful enough to sweep away everything else in the time of a flood.

Therefore, away from the glamour of fundamental rights adjudication, and away from the thrill of political controversy, it is in cases involving constitutional structure that courts often exercise significant influence upon the future direction of the Republic. And it is in this context that we must examine the recent decisions on money bills and on federalism.

Is the Aadhaar Bill a Money Bill?

First, money bills. Despite strong protests, the Aadhaar Act was passed as a money bill. This affected a crucial element of our constitutional structure: bicameralism. Bicameralism, in our parliamentary democracy, requires that a bill must be scrutinised and passed by both Houses of Parliament before it becomes law. The Lok Sabha represents the voice of the democratic majority. The Rajya Sabha represents the interests of the States, as well as perspectives free of immediate, electoral interests. The basic idea is that law-making is a balanced and deliberative process, not an exercise in pure majoritarianism. The crucial purpose of the Rajya Sabha is to act as a check and a balance upon the Lok Sabha, by scrutinising bills in a more deliberative and reflective manner, and raising concerns that may have been glossed over or evaded in the Lower House.

The role of the Rajya Sabha becomes even more important when we consider a unique Indian innovation: anti-defection. In the 1980s, it was decided that the only way to combat party defections was to disqualify members who voted against the whip, except under very tough

conditions. This effectively meant the end of intra-party democracy: individual MPs could no longer vote according to their conscience, and had to follow the diktats of the cabinet. Consequently, where there is a single-party majority in the Lok Sabha, the executive can effectively rule by decree, as it is in no threat of losing a vote if it fails to persuade its own party members. With the Lower House no longer able to check the government, the only remaining legislative forum that can then do so is the Rajya Sabha.

A money bill, however, takes the Rajya Sabha out of the equation: it only needs Lok Sabha approval. In combination with the anti-defection law, this places absolute power in the hands of the executive, and skews the democratic process. Hence, its use must be restricted to the most limited of circumstances. This was what was argued in the Aadhaar case: that the terms of the Constitution (Article 110) mandated that money bills be narrowly limited to those that fell exclusively within the categories set out in Article 110. The Aadhaar Act, which established a biometric database and set up an authority (the UIDAI) to administer it, could not in any sense be called a “money bill” simply because the funds for the Authority came from the Consolidated Fund of India. The majority judgment in the Aadhaar case, however, allowed the Act to stand as a money bill (after taking out a provision allowing private party use), and thus, effectively, gutted the Rajya Sabha’s role in the democratic process. After the court’s judgment, governments wanting to bypass Rajya Sabha scrutiny on a range of important issues can simply insert a provision specifying that money for a project is to come from the Consolidated Fund.

Meanwhile, the court was also considering another issue of democratic structure: the dispute between the central government (acting through the Lt Governor) and the government of Delhi. This dispute effectively turned upon the text of Article 239AA of the Constitution, a somewhat ambiguously drafted provision establishing Delhi as a hybrid federal entity — somewhere between a State and a Union Territory. In July 2018, while considering the overall constitutional position, a five-judge bench of the Supreme Court made it clear that, wherever the constitutional text was capable of more than one interpretation, the court would favour a reading that increased democratic accountability: that is, in case of doubt, power would lie with the government that had been directly elected by the people (in this case, the Delhi government).

Delhi dilemma: Centre vs State

When it came to applying this principle to the specific disputes between the two entities, however, a two-judge bench of the Supreme Court seemed to resile from this fundamental democratic principle. The February 2019 judgment bears very little evidence of democratic concerns: the heart of the dispute was about control over the civil services, which directly impacted day-to-day governance. While the constitutional provisions themselves were ambiguous, one judge held that the Delhi government had no control over civil servants above a certain rank, while another judge held that the Delhi government had no control over civil servants at all.

In 1973, the American historian Arthur M. Schlesinger coined the term “Imperial Presidency”, to characterise the increasing concentration of power in the office of the President, at the cost of other democratic institutions (such as the U.S. Congress and the Senate). Over the last few decades, many scholars have noticed this drift towards the increased powers of the political executive, across liberal democracies.

The Supreme Court’s decisions on Articles 110 (money bills) and 239AA (status of the federal unit of Delhi) have concentrated greater power in the hands of the executive. By expanding the scope of what counts as money bills, the court has set the cabinet down the road of transforming itself into a Roman-style imperator. And by privileging the centralising tendencies of the Constitution over its federalising ones, the court has squandered the chance to develop a strong

jurisprudence on the federal structure, that could have been of use in future disputes between the Central government and various federal units. The impact of these decisions will not be felt immediately, but in the long run, unless set right, one enduring legacy of the recent court — and, in particular, of Justice A.K. Sikri, who authored both decisions and who retired this week — might be the judicial facilitation of an imperial executive.

Gautam Bhatia is a Delhi-based lawyer. Disclaimer: he was part of the legal team challenging Aadhaar.

Source : www.thehindu.com Date : 2019-03-09

MARGINAL RISE IN WOMEN CANDIDATES, SAYS ADR

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

The increase in number of women candidates in the last three Lok Sabha polls remained nominal. Of the 51,143 candidates who contested various elections across the country, only 4,173 were women, says the Association for Democratic Reforms.

The maximum number of 150 women MPs and MLAs belong to the BJP, followed by 91 MPs and MLAs from the Congress.

The ADR analysed the affidavits of 51,143 male and female candidates, which included 4,865 sitting parliamentarians and MLAs. Among the 4,173 women candidates, 546 (13%) had declared criminal cases against them. In all, 4,173 (25%) are crorepatis.

“Among the State assemblies, none of the States had more than 10% of women candidates in the elections. States such as Jharkhand, West Bengal, Sikkim and Chhattisgarh had the highest percentage of women candidates in their respective Assembly elections,” said the report. Of the 4,865 sitting MPs and MLAs, only 440 (9%) are women, 94 of them have declared criminal antecedents and 310 (70%) are crorepatis. The Lok Sabha has 66 (12%) and the Rajya Sabha has 25 (11%) women parliamentarians.

END

Source : www.thehindu.com Date : 2019-03-09

STRANGE TURN: ON SC'S ORDER REGARDING AYODHYA DISPUTE

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

Mediation, especially when it is at the instance of a court, is a welcome option for those embroiled in protracted civil disputes. A compromise could indeed be preferable to an order that may leave one side aggrieved. However, it is questionable whether this principle can be applied to all disputes and in all situations. The Supreme Court's order appointing three mediators to find a solution to the Ram Janmabhoomi-Babri Masjid dispute is quite strange and incongruous, given that all such previous attempts have ended in failure. Further, the case is ripe for final hearing, and not all parties favoured mediation. The dispute over the site at Ayodhya, where a 16th century mosque stood until it was torn down by Hindutva fanatics in December 1992, has remained intractable since 1949. After the demolition of the Babri Masjid, the President referred to the Supreme Court the question whether there was a temple to Lord Ram before the mosque was built at the site. The court, in a landmark decision in 1994, declined to go into that question. More important, it revived the title suits and, thereby, restored due process and the rule of law. The present attempt by the Supreme Court to give mediation a chance within a narrow window of eight weeks goes against the spirit of the 1994 decision. After all, it was that verdict that made possible the 2010 judgment of the Allahabad High Court, which favoured a three-way split of the site among Ram Lalla, the Sunni Wakf Board and the Nirmohi Akhara, which is under appeal.

Ayodhya title dispute: Who are the mediators appointed by the Supreme Court?

A welcome feature of the court-mandated mediation attempt is that it will not consume much time; the same eight weeks are needed for preparation for the final hearing. The confidentiality rule will be helpful as none would want the atmosphere to be vitiated by premature disclosures when the country is in election mode. However, the inclusion of Sri Sri Ravi Shankar as one of the mediators is controversial. In the past, he has made remarks to the effect that Muslims ought to give up their claim and that the failure to find a negotiated settlement will result in "civil war". It is true that the prolonged problem has had an adverse impact on the body politic and some "healing" is required. But the injury to the country's secular fabric was caused by fanatical Hindutva groups that launched a revanchist campaign on the plea that some temples had been turned into mosques by invaders. The only way to heal this festering wound on the body politic is to render complete justice not only in the civil case, but also for the criminal act of the demolition. No one must be left with the impression that the exercise is aimed at privileging the faith-based argument that the mosque stood at the exact spot where Lord Ram was born over the legal question on who holds the title to the land.

END

Source : www.indianexpress.com Date : 2019-03-09

THE ROAD TO A CLOSURE

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

Sanjay R Hegde is a senior advocate in the Supreme Court and tweets @sanjayuvacha.

Ayodhya literally means land without war. Ironically the Ayodhya dispute, over building a temple or reconstructing a mosque on a piece of land claimed by both sides, has caused many a violent act over the Subcontinent's length and breadth. From the violence during L K Advani's Rath Yatra in 1989, to the riots in India, Pakistan and Bangladesh when the Babri Mosque was brought down in 1992, to the Bombay riots of 1993 and the Gujarat riots of 2002, the toll on human life and property has been colossal. And yet the problem seems to persist, with the matter meandering through the legal system. In 2010, the Allahabad High Court decided the suits between the parties by partitioning the land into three portions.

The solution satisfied no one and all parties appealed to the Supreme Court. The judgment of the Allahabad High Court ran into a few thousand pages, but the exhibits and record ran into several thousand more. To tie down three or more judges of the Supreme Court, to hear an appeal for months together is not a feasible proposition, in a court with a high attrition rate among judges. It is against this backdrop that we must evaluate the recent Supreme Court order, asking a panel of mediators to mediate the dispute, within a period of eight weeks.

The mediators are men of eminence. The chairman, Justice F M I Kalifulla has served with distinction on the Supreme Court. Sriram Panchu is a senior advocate, who has pioneered mediation as an alternative dispute resolution mechanism in this country. Sri Sri Ravi Shankar has come a long way from his initial days with Mahesh Yogi. However, one possible criticism of the panel's composition is the lack of a woman on it. The panel has to hold sittings in Faizabad and submit a status report within four weeks and try to resolve the issue within eight weeks.

To the untrained mind, mediation is simply a judgeless negotiation. To many minds, the problem in Ayodhya cannot be negotiated. On the Hindu side, some feel that while representing the infant deity, Ram Lalla, they lack authority to abandon any claim on his behalf. On the Muslim side, there are those who say that the land on which the mosque stood was dedicated to Allah in perpetuity and no human can willingly sign away anything that is owned by Allah almighty. Some of us refuse to believe that divinity is enhanced or diminished by a possessory title over a parcel of land. The country, however, is tired of a never-ending internal conflict, which no amount of goodwill appears to resolve.
This is where professional, active mediation comes in. Though Sreeram Panchu is the one with expertise as a mediator, it is hoped that the others on the panel allow a professional mediation process to play out. A trained mediator knows how to focus on interests and not on positions.

Human needs and emotions are at the heart of interests. Mediation, in this case, needs to identify, express and discuss those needs and emotions which lie at the heart of the dispute. The Hindu side needs an acknowledgment that India is a state with a Hindu majority, whose religious hurt needs redressal. The Muslim side needs reassurance that they live as equal citizens of India, with constitutional guarantees of protection of their lives, property and places of worship. Both sides need a win-win situation where they can step away from conflict, without a loss of face. A focus on facilitating honest, heart-to-heart dialogue, instead of focusing on

mediating a settlement, may yet yield results. Settlements often emerge without struggle, when underlying emotions are assuaged.

Nearly 25 years ago, the Supreme Court hearing the previous round of the Ayodhya case wrote: “The hearing left us wondering why the dispute cannot be resolved in the same manner and in the same spirit in which the matter was argued, particularly when some of the participants are common and are in a position to negotiate and resolve the dispute. We do hope this hearing has been commencement of that process which will ensure an amicable resolution of the dispute and it will not end with the hearing of this matter. This is a matter suited essentially to resolution by negotiations which does not end in a winner and a loser while adjudication leads to that end.

It is in the national interest that there is no loser at the end of the process adopted for resolution of the dispute so that the final outcome does not leave behind any rancour in anyone. This can be achieved by a negotiated solution on the basis of which a decree can be obtained in terms of such solution in these suits. Unless a solution is found which leaves everyone happy, that cannot be the beginning for continued harmony between ‘we the people of India’.”

Professional mediation on this dispute is, perhaps an idea, whose time has come around at long last. Here’s hoping for resolution devoutly to be prayed for.

END

Source : www.indianexpress.com Date : 2019-03-11

THE MEDIATION TRAP

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

Pratap Bhanu Mehta is vice-chancellor of Ashoka University. He was earlier president, Centre Policy Research, New Delhi, one of India's top think tanks. Before he started engaging with contemporary affairs, he taught political theory at Harvard, and briefly at JNU. He has written extensively on intellectual history, political theory, law, India's social transformation and world affairs. He is the recipient of the Infosys Prize, the Adisheshiah Prize and the Amartya Sen Prize.

The Ram Janmabhoomi-Babri Masjid dispute has long been accompanied by a sense of foreboding. The dispute has been historically charged, politically divisive and communally violent, putting both the nation and the Constitution at risk. So putting the dispute into mediation under the aegis of the Supreme Court evokes a resigned weariness. For decades, the Court abdicated its role and is now openly admitting that conventional legal and constitutional tools are powerless in the face of faith. So it is placing its hopes for “reconciliation” on mediation. The keenness to take this issue off the agenda is such that all parties hope India can move past the Ayodhya moment. It is hard to grudge an attempt at “reconciliation”.

But the weariness leading us to accept the mediation is also accompanied by a profound wariness of what might transpire. Before we come to the politics, it is hard not to remark on the spiritual hollowness of this moment. What is the framing of the mediation that should be acceptable? If the mediation is about getting the parties to the title dispute agree to an outcome, this remains something like a property mediation. If the framing is of reconciliation, then the question is: Who exactly is meant to reconcile with whom? And on what terms? The very framing of this dispute as one that requires reconciliation is an admission of defeat. It is an admission that the dispute is not going to be adjudicated on the terrain of truth, justice or due process.

The framing gives into one deeply problematic premise. The premise is that this is a dispute between two communities that require reconciliation. But who are these communities? Who was feeling unreconciled to their fellow citizens in the first place? Wasn’t the sense that “minorities” need to give a gesture to show their good intent already a nefarious piece of politics? Some Hindus want a temple. But what about those Hindus who think there was a temple on that site that was demolished in medieval India, but that it is still not sufficient grounds for building a temple there? What about those devotees who think that given our recent history, a just reconciliation would involve none of the traditional symbols — mosques and temples — triumphing over the site? Instead, the site should be an expression of a common hope for the future, a true Ram Rajya, not a reminder of sectarian divisions.

What about those whose keen devotional and historical sense tells us that Ram’s greatest triumph was that he did not become a totem in the games of sovereignty and power? In fact, there is a real danger, already apparent, that the cultural and spiritual sovereignty of Ram that was so creatively engineered by the brilliance of figures like Tulsidas is being overturned. In this construction, Ram is a constant, intimate presence: The Vaishnava turn that centred on “Sri Ramchandra kripalu bhaja man” was an audacious piece of spiritual thinking, the beating heart of Hinduism in North India. Those who believed all this were never in the need of being

reconciled. In fact, they worried that Ram was being reduced to a coarse game of majoritarianism; diminished by being aligned with a hateful and reactionary politics and rendered spiritually bankrupt by being reduced to a totem of sovereign power. If this is a reconciliation between communities, will these voices be represented? Or is the reconciliation only for those who want to monopolise Ram as a vehicle for historical revenge, whose sense of feigned insecurity requires a catharsis?

Then there is the politics of the occasion. There are three traps: Timing, personal and framing. Although ostensibly the Court has taken the issue off the agenda by giving eight weeks, it would be foolish not to see that the timing of the attempt subtly helps the BJP. While the Court has probably acted with the best intent, the timing will lend fillip to one of BJP's central claims. The claim is this: Hindu demands are taken seriously only when it is in power. The mediation may not result in much. But the underlying gesture involved in the Court claim that this is about "sentiment" has an elective affinity with BJP's politics. Sending it to mediation can be claimed as progress.

I happen to think that Sri Sri Ravi Shankar's appointment as mediator is deeply problematic. He has an openly declared position on the issue, has more or less intimidated institutions arguing that violence will ensue if a temple is not built, and represents the unsavoury aspects of a modern entrepreneurial figure to whom proximity to power matters more than spiritual values.

There is a third sense in which this mediation attempt is a trap. Suppose for moment that the only two alternatives on the table are building a temple at the site (with some mosque being built somewhere else), and not building a temple. Now imagine if the mediation fails to secure a temple. Let us not put too delicate a point on this. Who do you think will be blamed? On the other hand if a temple is secured, who do you think will claim the triumph? We may not know how the issue plays out in this election. But unless there is a larger political commitment to making sure that the outcome of the mediation is not politicised one way or the other, the issue will continue to simmer.

In this sense the Court has not understood the logic of its own claim that this is about sentiment. If it is about sentiment, why should three mediators or the small groups have any more imprimatur than the Supreme Court of India? The Allahabad High Court's judgment was a case of panchayati justice. But it did shrewdly realise that putting the onus on parties to find a solution makes them possible political targets.

There have been past attempts at mediation. The fact that they were overtly political was actually their virtue, not their failing. At least they openly acknowledged there is a politics to this. If this indeed is about sentiment, then India needs a larger political settlement against communalism, against the idea that our conception of citizenship and nationhood is tied to some story about medieval India that both the Left and Right have peddled. It remains to be seen whether this mediation can turn the needle on these large issues. For India's sake, we hope the mediation can transcend the limitation of its framing, and think of a truer reconciliation, one where no community triumphs. Only India and its constitutional values does.

The writer is vice-chancellor of Ashoka University. Views are personal

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Source : www.thehindu.com Date : 2019-03-12

A COMPROMISE IS STILL POSSIBLE: ON AYODHYA DISPUTE

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

The Supreme Court's attempt to maintain Hindu-Muslim harmony **through a mediated settlement** of the long-standing Babri Masjid dispute deserves appreciation. But it has raised a couple of concerns too. One relates to the choice of a mediator, and the other to the efficacy of mediation at this stage.

By definition, a mediator is a neutral third party who facilitates a negotiated settlement between adversarial contenders. Unfortunately, the neutrality of one of the three court-appointed mediators, Sri Sri Ravi Shankar, has come into question as some of his public pronouncements in the recent past appear to negate his supposed disinterestedness.

A year ago, in an open letter to the All India Muslim Personal Law Board (AIMPLB), Sri Sri Ravi Shankar had said: "People from both communities who are adamant on following the court's verdict are also driving the issue to a situation of defeat." The "best solution", therefore, is "an out-of-court settlement in which the Muslim bodies come forward and gift one acre of land to the Hindus who in turn will gift five acres of land nearby to the Muslims, to build a better mosque."

Ayodhya title dispute: Who are the mediators appointed by the Supreme Court?

He even told Muslims that giving up their claim to the disputed property did not amount to "surrendering this land to the people who demolished the Babri Masjid or to a particular organisation. On the contrary, they are gifting it to the people of India".

Apart from the fact that this position betrays Sri Sri Ravi Shankar's bias in favour of disputants belonging to one religion, it is difficult to understand the justifiability of treating a gift to Hindus as a gift to the people of India. Does he regard only Hindus as "the people of India" to the exclusion of other communities?

Nonetheless, it stands to reason that Muslims would be in a position to gift the land only when their ownership of it is confirmed by the Supreme Court. If Muslims lose the case, the entire land would come under the control of Hindus and the question of Muslims giving up their claim would then be rendered redundant.

But the Art of Living founder thinks that even a Hindu victory would not be conducive to peace. It could foster Muslim resentment and may "lead to riots throughout the country", he told the AIMPLB, thereby insinuating that Muslims are violent. He seems to be unaware that Muslims have agreed to abide by the court verdict whichever way it goes. Now that he has been made a mediator, Sri Sri Ravi Shankar must clarify if he still stands by his statements.

Despite Hindu groups opposing a negotiated settlement, the Supreme Court made it clear that an attempt should be made to settle the dispute by mediation. It overruled their objections by invoking Section 89 of the Code of Civil Procedure (CPC) which allows the court to refer any dispute to one of the four modes of non-adjudicatory resolution processes: namely, arbitration, conciliation, judicial settlement (including settlement through Lok Adalat), or mediation. In this case, the court opted for mediation.

This was again opposed on the basis of a two-judge Supreme Court judgment in *Afcons infrastructure and Ors. v. Cherian Verkay Construction and Ors* (2010). It illustratively explained that mediation cannot be done in a representative suit which involves public interest or the interest of large number of persons who are not represented in the court.

But the five-Judge bench led by Chief Justice of India Ranjan Gogoi differed. Citing the provisions of Order 1 rule 8 CPC and Order XXIII rule 3-B, it stated that there was no legal impediment to making a reference to mediation. Whether the said CPC provisions would apply in the event parties arrive at a settlement in the mediation proceedings was left open to be decided later.

Also, what the Supreme Court had frowned upon in *Afcons* was a civil court exercising power under Section 89 of the Code to refer a suit for “arbitration” without the concurrence of all the parties to the suit. But the court is free, the Supreme Court had said, to consider and decide upon any non-adjudicatory resolution method other than arbitration such as judicial settlement or mediation.

Questions still remain. If the Hindu groups continue to reject mediation, how will this dispute be resolved? And if they agree to negotiate, will the compromise they reach with Muslims be binding on all Hindus in India?

Even Justice D.Y. Chandrachud, who conceded that a negotiated settlement is most ‘desirable’ in this case, was initially not sure if such a settlement could bind millions of Hindus and Muslims as the issue is not an ordinary dispute between two private parties.

If examined closely, it would be seen that the Babri Masjid dispute is not really an explosive issue affecting the religious sentiments of millions of Hindus and Muslims as has been portrayed. This may have been the case in the initial years after the illegal demolition of the Babri Masjid. But today, more than a quarter century later, such a portrayal should be construed as having entered the realm of political mythopoeia where myths of various kinds are created at the hustings for electoral advantage.

The fact is, there is no evidence to show that the handful of parties claiming to represent Hindus and Muslims in this case are fully backed by their respective communities. In other words, the Babri Masjid/Ram Janmabhoomi imbroglio is no longer a life-affirming issue for the Indian masses, who are more concerned about jobs, poverty alleviation and access to affordable housing, health care and education.

That said, both communities cannot afford to let the Ayodhya dispute simmer forever and stall the country’s socio-economic growth. The main reason for the unrelenting Muslim attitude is the fear that if they give up their claim on the Babri Masjid, Hindu groups would ask for other “disputed” mosques to be handed over. After all one of the post-demolition kar sevak slogans in 1992 was, “*Yeh toh sirf jhanki hai*, *ab* Kashi, Mathura *baaki hai* (This is only the trailer, now Kashi and Mathura remain),” in which Kashi and Mathura are metonyms for two more disputed places of worship.

If this Muslim fear is addressed by the Hindu parties to the dispute, and also by influential organisations such as the Rashtriya Swayamsevak Sangh and the Vishwa Hindu Parishad, the chances of amicably resolving this seemingly intractable conflict would exponentially increase. A collective assurance from the Hindu side that it would not stake claim to any other “disputed” mosque in India could be the face-saving compromise and win-win situation both sides are

looking for.

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END

Source : www.thehindu.com Date : 2019-03-12

WHAT IS FIRST-PAST-THE-POST SYSTEM?

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

The first-past-the-post (FPTP) system is also known as the simple majority system. In this voting method, the candidate with the highest number of votes in a constituency is declared the winner. This system is used in India in direct elections to the Lok Sabha and State Legislative Assemblies. While FPTP is relatively simple, it does not always allow for a truly representative mandate, as the candidate could win despite securing less than half the votes in a contest. In 2014, the National Democratic Alliance led by the Bharatiya Janata Party won 336 seats with only 38.5% of the popular vote. Also, smaller parties representing specific groups have a lower chance of being elected in FPTP.

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Source : www.indianexpress.com Date : 2019-03-12

A TICKET TO RISE

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

Women account for 49 per cent of India's 90 crore voters; the turnout of women voters has risen sharply over the years, and was the highest ever in the last Lok Sabha elections (at 65.5 per cent). But India's representative democracy has defiantly refused to accord political equality to women — less than 12 per cent of its Lok Sabha legislators are women. Odisha Chief Minister and BJD chief Naveen Patnaik's decision to field 33 per cent women in 21 seats in the coming general elections is, therefore, a landmark move — one which must be embraced heartily by the political mainstream.

Patnaik pointed out that he was walking the path laid out by his father, the late Biju Patnaik, who was among the first votaries of 33 per cent reservation for women in panchayats. That idea travelled well, and the reservation was raised to 50 per cent of seats in several states. There were naysayers aplenty — with the commonly-held patronising belief that women would only serve as proxy candidates for male relatives. But the panchayati raj experience shows otherwise — more women have taken up leadership roles at the micro-level, despite obvious barriers, such as the (recently-scrapped) minimum education criterion to contest the polls in Rajasthan. That has created a critical mass of politically engaged women which is, perhaps, reflected in voting turnouts and in assertive demands — for instance, the push for prohibition in several states. But what after? The roadmap from panchayat to assembly and Parliament was never laid out — parties dodge the question with excuses such as winnability of candidates, while a closed political system remains most pliant to money power, family connections and, sometimes, simply the XY chromosome. The UPA government introduced the Women's Reservation Bill in 2008 — and then shut the door on it. In this backdrop, the BJD has shown a way out of chronic tokenism over women's political participation — if passing a bill to reserve seats for women is too much hard work in these polarised times, each party must push more women candidates into the fray.

Over the years, one of the successes of Indian democracy has been the way it has expanded to accommodate and articulate various interests — the upper-caste veto on politics, for instance, has been seriously challenged. But this push towards inclusivity has comprehensively excluded women, with whom political parties rarely even hold a conversation. True, there is no monolithic category of Indian woman, who is shaped by her caste, language and class location. But that diversity of political ambitions and needs — even the contestations over it — must be reflected in the making of policy and laws, and in assemblies and Parliament. Even the existing system has thrown up strong leaders such as Mamata Banerjee, Mayawati, J Jayalalithaa, among others, who stuck on at great personal cost to themselves. But a new generation of Indian women is ready to embrace their ambitions. It is time for political parties to open their doors.

Source : www.thehindu.com Date : 2019-03-13

SC QUESTIONS GOVT. ON TRACKING ASSETS

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

The Supreme Court has asked the government to confirm within two weeks whether its February 2018 judgment to set up a permanent mechanism to track unnatural increase in the assets of electoral candidates had been complied with.

A three-judge Bench led by Chief Justice Ranjan Gogoi on Tuesday directed the government to state whether there was any mechanism to deal with the non-disclosure of assets and income sources by a candidate.

The court has asked the government to clarify whether it has made the necessary amendments in Form 26, mandating submission by the candidates of information whether they suffer from any disqualification under the provisions of the Representation of the People Act, 1951.

The Bench directed the Secretary of the Legislative Department to file his reply within two weeks.

The order came on a contempt petition filed by NGO Lok Prahari. It was a petition by this NGO that had led to the February 16, 2018 verdict. The judgment had trained the spotlight on the exponential rise in the assets of politicians within a span of just five years.

END

Source : www.thehindu.com Date : 2019-03-13

WHAT IS PROPORTIONAL REPRESENTATION?

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

This refers to an electoral system in which the distribution of seats corresponds closely with the proportion of the total votes cast for each party. This is a more complicated but representative system than the first-past-the-post (FPTP) system, which is used in India. If a party gets 40% of the total votes, for example, a perfectly proportional system would allow it to get 40% of the seats. Some countries used a combination of the proportional representation system and the FPTP system.

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Source : www.thehindu.com Date : 2019-03-14

WHAT IS TACTICAL VOTING?

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

Also known as strategic voting, this refers to the act of voting for a particular candidate or political party not because the voter necessarily supports them but because she wants to prevent some other party or candidate from winning. For example, a voter who prefers a leftist candidate would vote for a centrist candidate in order to prevent a right-wing candidate from winning because the leftist candidate is weak in that constituency.

END

Source : www.thehindu.com Date : 2019-03-14

THE NEED FOR CONSTITUTIONAL COURAGE: ON AYODHYA DISPUTE

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

The **Supreme Court's decision to appoint a panel of mediators** to resolve the long-standing Ram Janmabhoomi-Babri Masjid (Ayodhya) dispute is deeply problematic. By taking this route, the court has given the impression that the dispute is best solved outside the legal domain. In a very short span of time, the court has moved from its position of treating this as a title dispute to a matter involving religious sentiments. It has not explained what led it to change its stance, especially since mediations that have taken place in the past have failed.

The idea of mediation was mooted in 2017 by a Bench headed by the then Chief Justice of India, J.S. Khehar. The Bench had suggested that the issue was much larger than ownership of land, and that mediation might help in "healing relations". After Justice Khehar, Chief Justice Dipak Misra insisted on treating it as a land dispute only. Now, the court has again brought back sentiments into the legal discourse. This wavering and ambiguity in the court has accompanied the case all along.

A compromise is still possible: on Ayodhya dispute

Sentiment is a problematic word, especially when there are two political sentiments competing with each other. This is not a question of the majority community feeling deprived of a temple at the birth place of Lord Ram. On the other hand, it is a majoritarian political ploy masquerading as religious sentiment. This is a ploy to subjugate the minority Muslim community further, by playing a symbolic game. In this game, the numbers are stacked against Muslims. Lazy common sense holds that the minority must understand the 'historical injustice' done to Hindus by their ancestors and atone for it by leaving the site for them.

Moreover, even if we accept the notion of contending sensitivities, one must not ignore the sentiments of those Hindus who do not consider this issue as one that defines their identity. There are also many Hindus who would not like a temple to come up in Ayodhya by displacing a mosque. How will these myriad views be represented in the mediation process, **which began on March 13 in Faizabad**? By creating two neat sides, the court has validated the claim of the Rashtriya Swayamsevak Sangh and its political arm, the Bharatiya Janata Party, and weakened the position of the Hindus who contest this division.

The Ram Janmabhoomi-Babri Masjid issue was never religious. The BJP has always included the promise of constructing a Ram temple in its election manifestos over the years. L.K. Advani's 1990 rath yatra not only led to the eventual demolition of the Babri Masjid, but expanded the national footprint of the BJP. The campaign was aimed at denigrating Muslims and entrenching their 'foreignness' in the minds of Hindus by using the figure of Babar.

Since the court has itself digressed from the brief before it, one can ask why it did not think it necessary to first address the criminality of an act in 1949, when the idol of Lord Ram was placed in the Babri mosque on the night of December 22, which happened much before the demolition of the mosque itself. Also, the bloodletting accompanying the demolition of the mosque cannot be dissociated from the act. Why is it that the issue of sentiments is given primacy and not the criminality of the act, when the court is equipped to address the latter? Why is the court wading into the mediation route yet again after so many years of hearing, and when

the time is right for taking on majoritarian audacity?

Further, the eight-week time limit for the mediators coincides with the election campaign period and ends just before voting ends. It is not difficult to see which party will use this in its favour. If the mediation committee fails to come to a consensus, this could be used to fuel anger in Ayodhya once again, against both Muslims as well as the court.

It is not just the idea of mediation but the **selection of mediators** that casts a doubt on the process. While Justice F.M.I. Kalifulla is a retired Supreme Court judge and senior advocate Sriram Panchu has been instrumental in making mediation a part of India's legal system, what are Sri Sri Ravi Shankar's qualifications? He has not only flouted laws himself but has espoused the cause of a temple at the disputed site on multiple occasions. He is the one who said we will have a "Syria in India" if the Ram Mandir issue is not resolved soon. By no standard does Mr. Ravi Shankar qualify to be a mediator. A mediator is expected to be open-minded and fair, and if we go by his controversial statements, it looks doubtful whether he'll be independent.

At times like this, we expect the apex court to uphold constitutional morality. It does not help in a political dispute to replace the constitutional route with a "humanitarian" one. The sentiment of the court to "heal relationships" is laudable. But it is only constitutional courage that can steer us through these troubled times.

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END

Source : www.hindustantimes.com Date : 2019-03-14

OPINION

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

The Election Commission of India (ECI) has announced measures to curb fake news and misinformation on social media platforms. It has brought political parties' social media content under the ambit of model code of conduct, and expects candidates to disclose their social media accounts and all expenditure on their respective social media campaigns.

But will this be enough? After all, the issue of fake news goes beyond politicians and political parties, partly because social media puts information dissemination into the hands of individuals. Can any measure adequately monitor the gigantic Indian Internet user base, which exceeds 500 million?

Monitoring such a large number of users won't be possible for reasons as simple as the volume of content generated, its immediacy and the challenge with identifying sources. Besides, distinguishing between authentic and inauthentic information is in itself a challenge and could be prone to biases, putting enormous power in the hands of those monitoring the content for social media or the commission.

Despite their avowed intention to curb fake news and misinformation, social media companies continued to be viewed with distrust by some experts and for good reason -- it is in their interest to maximise time and engagement. At the level of users, social media, it has been found, perpetuate and amplify existing biases, creating so-called filter bubbles. As for the political parties and politicians themselves, even assuming their IT cells (every party has one) are above board, it is unlikely they will have either the means or the inclination to crack down on supporters peddling misinformation.

There's no denying the power of these platforms. James Harkin, fellow at Shorenstein Center on Media, Politics and Public Policy, writes in Columbia Journalism Review that journalism is now the second draft of history; the first draft is on new and social media.

Nor their impact. Most media consumers have time only to consume first drafts.

During the nascent years of social media (the worldwide web turned 30 yesterday), tech champions called it a tool for open dialogue, not anticipating the bubbles it would create. Before a social consensus emerges — and as the medium matures — it can only be hoped that the ECI's well-publicised steps make users become wary of the sources they get information from.The ECI's seriousness will hopefully bring about a sense of accountability among technology companies and political parties, but the organisation is up against it.

That's because technology companies need incentives to effectively crack down on fake news; political parties must hold themselves back (even as they are likely to succumb to unrestraint in their resolve to win elections); and consumers should be evolved enough to be able to tell the difference between fake and real news.

First Published: Mar 13, 2019 07:52 IST

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Source : www.thehindu.com Date : 2019-03-15

WHAT IS ABSENTEE BALLOT?

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

This refers to a vote cast by someone who is unable to go to the polling station. The system is designed to increase voter turnout. In some countries, the voter is required to give a reason for not going to the polling station, before participating in an absentee ballot. In India, a postal ballot is available to only some citizens. The Representation of the People Act, 1950 allows heads of states and those serving in the armed forces to vote through postal means. The Lok Sabha recently passed a Bill to allow proxy voting for NRIs. However, domestic migrants and absentee voters in India cannot cast postal votes.

END

Source : www.thehindu.com Date : 2019-03-15

AN ABHORRENT AND UNJUST DEVICE: ON DEATH PENALTY

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

On March 5, a three-judge bench of the Supreme Court delivered verdicts in three different death penalty cases. In two of those the court entirely exonerated the suspects, while in the third it not only found the accused guilty of murder, but also deserving of capital punishment. Individually read, the judgments typify the deep penological confusion that pervades India's criminal justice system. Collectively, the cases demonstrate how arbitrary the death penalty is, how its application is mired by a belief in conflicting values, and how the fundamental requirement of precision in criminal law has been replaced by a rhetorical cry for avenging crime by invoking the "collective conscience" of society.

In the first of the cases, *Digamber Vaishnav v. State of Chhattisgarh*, two persons were convicted of murdering five women and were sentenced to death in 2014. A year later, the Chhattisgarh High Court affirmed these sentences. But the chief testimony, which formed the backbone of the prosecution's case, was that of a nine-year-old child, who was, shockingly, not even an eye-witness to the crime. This, the court therefore ruled, was effectively a conviction premised on surmise and conjecture.

Ankush Maruti Shinde v. State of Maharashtra, the second of the cases, saw a gut-wrenching series of events being reduced to macabre farce. In 2006, a trial court found six persons guilty of rape and murder and sentenced each of them to death. A year later, the Bombay High Court confirmed the finding of guilt, but commuted the sentences imposed on three of the individuals to life imprisonment. However, in 2009, the Supreme Court not only dismissed the appeals filed by those sentenced to death, but also, astonishingly, enhanced the penalties of the three persons whose sentences had been commuted by ordering that they too be punished with death. In doing so, the court relied on a 1996 verdict, in *Ravji v. State of Rajasthan*, where it had ruled that in determining whether to award the death penalty "it is the nature and gravity of the crime" alone that demand consideration. Although in May 2009, the Supreme Court had declared its earlier ruling in *Ravji* incorrect, by holding that even in those cases where the crime is brutal and heinous the criminal's antecedents, including his economic and social background, must have a bearing on the award of the sentence, it took until October last year for the court to recall its order sentencing the six persons to death.

During this time, as the court records, "The accused remained under constant stress and in the perpetual fear of death." What is more, one of them, who was later found to be a juvenile at the time when the alleged crime was committed, was kept in solitary confinement. He was not allowed to meet any of the other prisoners and was only allowed an occasional meeting with his mother. For their troubles — for having spent more than a decade on death row despite having committed no crime — the bench ordered that the state pay each of them a sum of 5 lakh. But while the court was quick to apportion blame on the prosecution, it didn't so much as mention its own errors and its own proclivity to mirror the mentality of a mob.

Yet, we might have been forgiven for thinking that the court's experience in hearing *Digamber Vaishnav* and, especially, *Ankush Maruti Shinde* may have made it more circumspect in upholding death sentences. After all, if these decisions had shown us anything, it was that the judicial process is far from inerrant. But the collective conscience of society, represented through the court's capital punishment jurisprudence, it appears, is still alive and kicking. For in the third

of the cases, in *Khushwinder Singh v. State of Punjab*, it not only affirmed the conviction of the accused, on charges of murdering six members of a family, but also gave its imprimatur to the award of the death penalty. The murders, the judgment holds, were “diabolical and dastardly” and the case fell into the “rarest of rare” categories where “there is no alternative punishment suitable, except the death sentence”.

The rarest of rare doctrine has its origins in *Bachan Singh v. State of Punjab* (1980). There, the court declared Section 302 of the Indian Penal Code, which prescribes the death penalty for murder, as constitutionally valid, but bounded its limits by holding that the punishment can only be prescribed in the rarest of rare cases. Since then, the court has repeatedly cautioned that capital punishment ought to only be decreed when the state can clearly establish that a convict is incapable of being reformed and rehabilitated. But, in *Khushwinder Singh*, the court does not place on record any such piece of evidence that the state was called on to produce. Indeed, the court does not so much as attempt to answer whether the accused was, in fact, capable of reformation or not. Instead, it merely endorses the death sentence by holding that there simply were no mitigating circumstances warranting an alternative penalty.

That capital punishment serves no legitimate penological purpose is by now abundantly clear. There’s almost no empirical evidence available showing that the death penalty actually deters crime. If anything, independent studies have repeatedly shown the converse to be true. In the U.S., for instance, States that employ capital punishment have had drastically higher rates of homicide in comparison with those States where the death penalty is no longer engaged. In India, evidence also points to a disproportionate application of the sentence, with the most economically and socially marginalised amongst us suffering the most. The Death Penalty India Report (DPIR), released on May 6, 2016, by Project 39A of the National Law University, Delhi, for example, shows that 74% of prisoners on death row, at the time of the study, were economically vulnerable, and 63% were either the primary or sole earners in their families. More than 60% of those sentenced to death had not completed their secondary school education, and 23% had never attended school, a factor which, as the report states, “points to the alienation that they would experience from the legal process, in terms of the extent to which they are able to understand the case against them and engage with the criminal justice system.” Just as distressingly, 76% of those sentenced to death belonged to backward classes and religious minorities, including all 12 female prisoners.

In the face of this invidiously prejudiced application, the retention of capital punishment utterly undermines the country’s moral foundations. Over the course of the last decade, the Supreme Court may well have expanded the rights of death row prisoners: delays by the President in disposing of mercy petitions now constitute a valid ground for commutation; review petitions filed by death row convicts now have to be mandatorily heard in open court. But as the judgments delivered on March 5 reveal, the very preservation of the death penalty creates iniquitous results. Cases such as *Ankush Maruti Shinde*, where the accused, as the judgment records, were very poor labourers, “nomadic tribes coming from the lower strata of the society,” ought to make it evident that the death penalty is an abhorrent and unjust device.

Not only are wholly irrational criteria applied to arrive at dangerously irreversible decisions, the law’s application is made all the more sinister by invariably imposing these standards on the most vulnerable members of society. The Constitution promises to every person equality before the law. But capital punishment renders this pledge hollow. It legalises a form of violence, and it closes down, as Judith Butler wrote, expounding Jacques Derrida, “the distinction between justice and vengeance,” where “justice becomes the moralised form that vengeance assumes.”

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Source : www.pib.nic.in Date : 2019-03-16

REGISTRATION OF POLITICAL PARTIES UNDER SECTION 29A OF THE

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

Election Commission

Registration of political parties under Section 29A of the

Representation of the People Act, 1951 – Public Notice Period

Posted On: 15 MAR 2019 6:06PM by PIB Delhi

Registration of Political parties is governed by the provisions of Section 29A of the Representation of the People Act, 1951. A party seeking registration under the said Section with the Commission has to submit an application to the Commission within a period of 30 days following the date of its formation as per guidelines prescribed by the Election Commission of India in exercise of the powers conferred by Article 324 of the Commission of India and Section 29A of the Representation of the People Act, 1951. As per existing guidelines, the applicant association is inter-alia asked to publish proposed Name of the party in two national daily news papers and two local daily newspapers, on two days in same news papers, for inviting objections, if any, with regard to the proposed registration of the party before the Commission within a 30 days from such publication.

3. The commission has announced the elections for the Lok Sabha and Assemblies to Andhra Pradesh, Orissa, Arunachal Pradesh on 10th March, 2019. Therefore, in view of the current elections, the Commission has given one time relaxation and has reduced the notice period from 30 days to 7 days for the parties who have published their public notice by 10th March, 2019 i.e. date of announcement of election.

4. Now, therefore, if any body has any objection with regard to the registration of any political party who have published their public notice by 10th march, 2019 may file their objection against that party by 17th March, 2019.

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(Release ID: 1568917) Visitor Counter : 477

Read this release in: Hindi

END

Source : www.thehindu.com Date : 2019-03-18

WHAT IS A 'HUNG PARLIAMENT'?

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

When no party or pre-poll alliance is able to secure a majority in the election, this leads to a hung Parliament. The total number of seats in the Lok Sabha is 543. A party or coalition needs to win one seat above the 50% mark, or 272 seats, in order to form the government. If it is unable to do so, the President may invite the leader of the single largest party/alliance in the House to try to secure the confidence of the House. In the alternative, the President may invite a combination of parties who, in his opinion, might be in a position to command a majority in the House.

END

Source : www.thehindu.com Date : 2019-03-19

THE DEATH PENALTY: A FATAL MARGIN OF ERROR

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

On March 5, 2019, a three-judge bench of the Supreme Court headed by Justice A.K. Sikri (now retired) found Khushwinder Singh guilty and befitting of the death sentence (*Khushwinder Singh v. State of Punjab*). In 2013, the Fatehgarh Sahib sessions court had convicted and sentenced him to death for killing six relatives of his wife with the motive of committing theft. The last time the death penalty was upheld by the Supreme Court was in July 2018 in the Delhi gang rape case. Since then, the court has acquitted 10 death row prisoners and reduced the sentence to life imprisonment of 23 others. As Singh's case moves closer to the gallows, the judgment highlights the processes that cause cases to slip through the cracks of the 'rarest of the rare' doctrine, which mandates a consideration of both the crime and the criminal. The judgment exemplifies the varied standards of legal representation that impacts the imposition of the death penalty.

Singh's death sentence stands in contrast to nine cases decided by three-judge benches headed by Justice Sikri since November 2018 which resulted in six commutations to life imprisonment and eight acquittals. In these judgments, the duty of the court to conduct an effective sentencing hearing was emphasised and factors such as good conduct in custody, education, age, social, emotional and mental condition of the offender, and the possibility of reform were highlighted as relevant considerations in the sentencing scheme. However, none of these factors appear to have been considered for Singh. The judgment declares at the outset that Singh's lawyer "is not in a position to point out any mitigating circumstance". Without commenting on the effect of that deficiency on the quality of the sentencing exercise being carried out by the court, it erroneously relies only on the pre-planned nature of the crime, its brutality and the number of victims to impose the death sentence. Grounds relating to the criminal such as his conduct in prison, his socio-economic and educational backgrounds, or the probability of reformation receive no comment from the court.

In late 2018, another three-judge bench of the Supreme Court reversed its own finding in *M.A. Antony v. State of Kerala*, involving the murder of six relatives of the accused. The court chose to commute the death penalty factoring the 'lack of evidence' to show that the convict was a hardened criminal or that he was beyond reform. The similarities in the nature of the crime between the cases of Singh and Antony are unfortunate and uncannily similar. In both cases, six family members lost their lives, including two children. The motive in both, according to the prosecution, was money and the victims were close relatives. Both convicts were middle-aged men with families of their own. While in Antony's case, his socio-economic conditions and lack of criminal antecedents were considered by the court in deciding that there was a probability of his reformation, in Singh's judgment, there is a complete silence on this aspect, providing yet another instance of the arbitrary imposition of the death penalty.

The irreversibility of the death penalty has fundamentally affected the jurisprudence around it. It is commonly accepted that a judge in adversarial proceedings cannot go on a 'truth searching exploration' beyond what is presented. Yet, death penalty jurisprudence is rife with examples where duty has been placed upon the courts to elicit information relating to the question of sentence, even if none is adduced before it. Justice K.S. Radhakrishnan's judgment in *Ajay Pandit v. State of Maharashtra* (2012), held that the court has a 'duty and obligation' to elicit relevant facts even if the accused was totally silent in such situations. In *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009), while discussing the responsibility of courts with respect to the sentencing scheme laid out in *Bachan Singh v. State of Punjab*,

Justice Sinha opined that *Bachan Singh* makes no distinction on the roles and responsibility of appellate courts and therefore it was incumbent upon all courts to ensure the ratio laid down in *Bachan Singh* was 'scrupulously' followed, adding, "if anything, inverse pyramid of responsibility is applicable in death penalty cases".

Unlike Khushwinder Singh's case, in the past few months the Supreme Court has rightly considered evidence about the criminal by calling for medical records, reports of prison conduct, including poetry written by a convict post-incarceration to ascertain the appropriate sentence. This was not attempted in Singh's case. At the core of the arbitrariness in death penalty sentencing is the inconsistent approach to mitigating factors. The Supreme Court has, unfortunately, not developed any requirements that guide the collection, presentation and consideration of mitigating factors. Very often, barely any mitigating factors are presented on behalf of death row prisoners; if they are, they are of poor quality. Judges are often left only with information concerning the crime to determine the punishment. And, undoubtedly, Singh is a victim of this. He ended up being defined only by his crime with no other information about his life coming up before the judges. The quality of legal representation continues to affect the administration of the death penalty, even when cases are decided by pro-active and sensitive judges.

The inconsistent and arbitrary application of the death penalty remains a matter of great concern to the judiciary. Justice Kurian Joseph's parting words in *Chhannu Lal Verma v. State of Chhattisgarh*, calling for the gradual abolition of the death penalty, require serious introspection from the court and the body politic, and for us to recognise that the efforts to make the administration of the death penalty fairer are like chasing the wind. Our institutions may persist with attempts to 'tinker with the machinery of death' until there is a collective realisation that the death penalty is untenable in a fair criminal justice system. Till such time, the setting of established benchmarks for practice, and a system of oversight are necessary to ensure that the quality of legal representation does not become the difference between a sentence of life and death.

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Source : www.thehindu.com Date : 2019-03-20

REPEAT MPS' ASSETS ROSE 142%

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

The average financial assets of 153 re-elected Lok Sabha MPs grew by 142%, from Rs. 5.5 crore in 2009 to Rs. 13.32 crore in 2014, according to an analysis by National Election Watch and the Association for Democratic Reforms.

E. T. Mohammed Basheer of the IUML declared the highest jump of 2,018% (an almost 22-fold surge), followed by the TMC's Sisir Kumar Adhikari with 1,700%. The figure for AIADMK parliamentarian P. Venugopal went up by 1,281%.

However, there were also a few parliamentarians whose financial assets registered a sharp decline: the biggest drop of 67% was reported by the CPI (M)'s P. Karunakaran, while the assets of the BJP's Jagdambika Pal shrank 64%. Arjun Charan Sethi of the BJD declared a decrease of 39%; for BJP's Om Prakash Yadav it went down by 27%; and by 21% for the Congress's K.V. Thomas.

"Financial details of 153 sitting re-elected MPs fielded by various political parties have been taken from the recently filed affidavits by these MPs and the values of these financial assets have been compared to the corresponding values of the assets that the MPs showed in their affidavits from the previous elections," the two organisations said.

In the BJP, the assets of Dr. Ramshankar Katheria grew by 869%; those of Shatrughan Sinha by 778%; the jump was 660% in the case of Danve Raosaheb Dadarao; 608% for Arjun Ram Meghwal; 592% for Hari Manjhi from Gaya; and 588% for D.V. Sadananda Gowda. Varun Gandhi's assets increased by 625%. The average for the party's re-elected MPs was an increase of 140%.

The MPs of the Congress on average reported a little more than a doubling (109%) in their assets. Parliamentarian Kodikunnil Suresh's assets increased by 702%; it was 573% for the former party president Sonia Gandhi; and 304% for her son and current party chief Rahul Gandhi.

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Source : www.thehindu.com Date : 2019-03-22

WHAT IS INDELIBLE INK?

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

This refers to the violet-coloured ink in India that is applied on a voter’s forefinger after she exercises her vote. In 1962, the Election Commission in collaboration with the Law Ministry, the National Physical Laboratory of India and the National Research Development Corporation made an agreement with Mysore Paints and Varnish Ltd. to manufacture ink that couldn't be wiped off easily. Mysore Paints was founded in 1937 by Maharaja Krishnaraja Wadiyar IV. The company is the sole supplier of indelible ink for civic body, Assembly and Parliamentary polls. It also supplies ink to about 25 countries. Indelible ink remains bright for about 10 days, after which it starts fading. It is known to contain silver nitrate and is manufactured in secrecy.

END

Source : www.thehindu.com Date : 2019-03-25

ANOTHER LOOK AT FISCAL TRANSFERS

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

Federalism is an old concept. Its origin is mainly political. It is well known that the efficiency of a government depends on, among other factors, its structure. In large countries, it has been felt that only a federal structure can efficiently meet the requirements of people from different regions. Underlying this proposition is the premise that preferences vary across regions.

In our country during the independence struggle, provincial autonomy was regarded as an integral part of the freedom movement. However, after Independence, several compulsions, which included defence and internal security, led to a scheme of federalism in which the Centre assumed greater importance. Also in the immediate period following Independence, when the Centre and all States were ruled by the same party and when many of the powerful provincial leaders migrated to the Centre, the process of centralisation gathered further momentum. Economic planning at a nation-wide level helped this centralising process.

Fiscal federalism is the economic counterpart to political federalism. Fiscal federalism is concerned with the assignment on the one hand of functions to different levels of government, and with appropriate fiscal instruments for carrying out these functions on the other. It is generally believed that the Central government must provide national public goods that render services to the entire population. A typical example cited is defence. Sub-national governments are expected to provide goods and services whose consumption is limited to their own jurisdictions. An equally important question in fiscal federalism is the determination of the specific fiscal instruments that would enable the different levels of government to carry out their functions. This is the ‘tax-assignment problem’ which is much discussed in the literature on the subject. In determining the taxes that are best suited for use at different levels of government, one basic consideration is in relation to the mobility of economic agents, goods and resources. It is generally argued that the de-centralised levels of government should avoid non-benefit taxes and taxes on mobile units.

Strengthening the federal link

This implies that the Central government should have the responsibility to levy non-benefit taxes and taxes on mobile units or resources. Building these principles into an actual scheme of assignment of taxes to different levels of government in a Constitution is indeed very difficult. Different Constitutions interpret differently what is mobile and what is purely a benefit tax. For example, in the United States and Canada, both Federal and State governments have concurrent powers to levy income tax. On the contrary, in India, income tax is levied only by the Central government though shared with the States. Recognising the possibility of imbalance between resources and responsibilities, many countries have a system of inter-governmental transfers.

The Indian Constitution lays down the functions as well as taxing powers of the Centre and States. It is against this background that the issues relating to the correction of vertical and horizontal imbalances have been addressed by every Finance Commission, taking into account the prevailing set of circumstances. However, Central transfers to States are not confined to the recommendations of the Finance Commissions. There are other channels such as those through the Planning Commission until recently as well the discretionary grants of the Central government.

In 2010-11, in the combined revenue receipts of the Centre and States, the share of the Centre was 64.68%. After transfer, the share came down to 40.20%. In the case of the States, their share before transfers was 35.32%. After the receipts of transfers the share of States went up to 59.80%. Thus the shares got reversed. In 2016-17, the share of the Centre after transfers was 33.37% and that of the States was 66.63%. In the case of total expenditures, the share of the Centre in 2014-15 was 41.14% and that of the States was 58.86%. The ultimate position appears reasonable. The question may be on the mode of transfers.

The Fourteenth Finance Commission has broken new ground in terms of allocation of resources. One of its major recommendations has been to increase the share of tax devolution to 42% of the divisible pool. This is a substantial increase by almost 10 percentage points. The commission has argued that this does not necessarily affect the overall transfers but only enhances the share of unconditional transfers. It is true that Centrally sponsored schemes, which have ballooned in recent years, may have ‘encroached’ on the territory of States. Over years, the performance of the Central government is judged not only on the basis of actions taken which fall strictly in its jurisdiction but also on initiatives undertaken in the areas which fall in the Concurrent and even State lists. Centralised planning has something to do with it. Today, the Central government is held responsible for everything that happens, including, for example, agrarian distress. In viewing the responsibilities of the Centre and States we must take a broader view than what is stipulated in the Constitution.

On the allocation of unconditional transfers, two questions arise. The first is to determine the total transfers that need to be made, while the second is whether all transfers must be done by the Finance Commission alone. Finance Commissions prior to the Fourteenth recognised that some transfers were being made by the Planning Commission; this was kept in mind while deciding on tax devolution. By the time the Fourteenth Finance Commission was required to submit its report, a fundamental change in the institutional framework had occurred.

The Planning Commission was replaced by the NITI Aayog, which was simply a think-tank with no powers of resource allocation. In this context perhaps what the Fourteenth Finance Commission did was justifiable. Of course, the Fourteenth Finance Commission did what it did because the terms of reference had not made any distinction between Plan and non-Plan revenue expenditures. The moot question is about what happens if any future government revives the Planning Commission with financial powers. This will put the Central government in a fix.

Perhaps the time has come for the Constitution to be amended and the proportion of shareable taxes that should go to the States fixed at the desired level. The shareable tax pool must also include cesses and surcharges as these have sharply increased in recent years. Fixing the ratio at 42% of shareable taxes, including cesses and surcharges, seems appropriate. Another possible route is to follow the practice in the U.S. and Canada: of allowing the States to levy tax on personal income, with some limitations. Since one of the concerns is that resources do not match functions, this may be a way out. But, as in the U.S., the scheme should be simple and ride on federal income tax, that is, just a levy on the income assessed by federal authorities. The freedom given to the States must be limited. It is important to note that the levy by the Centre and States together should be reasonable.

Also once this power is given to the States, the transfers from the Centre need adjustment. As far as India is concerned, this is an area which needs a fuller study. Adoption of any one of these alternatives will avoid friction between the Centre and the States. Perhaps the first alternative of constitutionally fixing the ratio is the easiest.

There are issues relating to horizontal distribution. Equity considerations have dominated the

allocations. This is as it should be. However, the ability of bringing about equalisation across States in India has limitations. Even the relatively richer States have their own problems and they feel ‘cheated’ because of the overuse of the equity criterion. An appropriate balancing of criteria is needed particularly in the context of the rise in unconditional transfers. Of course, appropriate balancing is what all Finance Commissions are concerned about.

C. Rangarajan is former Chairman of the Economic Advisory Council to the Prime Minister and former Governor, Reserve Bank of India

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Source : www.economictimes.indiatimes.com Date : 2019-03-29

FINANCE COMMISSION CHIEF MAKES CASE FOR INSTITUTIONAL MECHANISM TO CHECK FISCAL DEFICIT

Relevant for: Indian Polity | Topic: Finance Commission

NEW DELHI: Finance Commission Chairman N K Singh Thursday made a case for setting up a " fiscal council" as an institutional mechanism to monitor fiscal consolidation roadmap of the Centre and state governments.

He also said fiscal federalism is a dynamic process and 'a Work in Motion'.

Singh was speaking at the launch of the book ' Indian Fiscal Federalism' written by Y V Reddy, who had served as RBI Governor as well as Finance Commission Chairman.

Referring to a suggestion in the book, Singh said he too agrees that there should be some mechanism to ensure that basic spirit of devolution process is not undercut by clever financial engineering or taking recourse to traditions that makes it technical and legally tenable but perhaps morally not so.

Emphasising that rules of the game should be same for both the Centre as well as the states with regard to borrowings, Singh said, "for state government liabilities, Article 293 (3) provides a constitutional check over borrowings. But there are no such restriction on the Centre".

"I feel that it is time we have an alternative institutional mechanism like fiscal council to enforce fiscal rules and keep a check on the centre's fiscal consolidation," he said.

Singh, who had also served as revenue secretary in the finance ministry, agreed with the suggestion in the book that the Finance Commission as envisaged in the Constitution does not prohibit its continuous functioning except that it has to be re-constituted before the tenure ends every five years.

Talking to reporters later, Singh said, "we do need mechanism for enforcement which will be equally applicable for both the Centre and the states before Finance Commission or any other can work out and lay out a coherent map of fiscal consolidation".

Recently, Reserve Bank of India Governor Shaktikanta Das too made a case for a permanent status to Finance Commission.

At the book launch event, former Deputy Chairman of erstwhile Planning Commission Montek Singh Ahluwalia underlined the need for increasing allocation of funds for the municipalities.

Former Finance Minister of Jammu and Kashmir Haseeb Drabu stressed on the need for coordination between the Finance Commission and the GST Council.

"GST Council has no clue about what the Finance Commission is doing and Finance Commission has even lesser clue of what the GST Council is doing," he said, adding there was a need for institutional mechanism to resolve differences between the central and state governments.

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