INSIGHTS into EDITORIAL

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Insights into Editorial: For the rich, India is as good as a tax haven

Article Link
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As part of a transparency drive, the government has made public direct tax data for last 15 years. However, data for individuals has been published only for 2012-13 assessment year, which shows taxes for income in financial year ended March 31, 2012.

Highlights of the data:

- Taxpayers account for just about 1% of India’s population, but tax outgo was over Rs. 1 crore for as many as 5,430 individuals.
- A total of 2.87 crore individuals filed income tax returns for the year 2012-13, but 1.62 crore of them did not pay any tax — leaving the number of taxpayers at just about 1.25 crore.
- The tax outgo was less than Rs. 1.5 lakh for a vast majority of nearly 89% taxpayers (over 1.11 crore). Their average tax payable was just about Rs. 21,000, while the collective amount stood at over Rs. 23,000 crore.
• The three individuals in the top-bracket of Rs. 100-500 crore paid a total tax of Rs. 437 crore — resulting in an average tax outgo of Rs. 145.80 crore.
• As many as 5,430 individuals paid income tax of over Rs. 1 crore. Out of this, the tax range was Rs. 1-5 crore for more than 5,000 individuals, resulting in a total outgo of Rs. 8,907 crore.
• The bulk of individuals who filed returns for the assessment year 2012-13 earned an annual salary between Rs. 5.5 lakh and Rs. 9.5 lakh.
• Over 20.23 lakh taxpayers earned Rs. 5.5-9.5 lakh, while their cumulative salary earnings stood at Rs. 1.40 lakh crore in the financial year 2011-12.
• Further 19.18 lakh individuals earned salary of Rs. 2.5-3.5 lakh that year. Six individuals fell in the high-end earning bracket of Rs. 50-100 crore of salary income. In the salary range of Rs. 1-5 crore, there were as many as 17,515 individuals.
• Nearly 2.87 crore salary earners filed their I-T returns in assessment year 2012-13.

Concerns:

• These figures show that India remains a low-tax country despite the acceleration of economic growth in the past decade.
• The data also reveal that income inequality has risen in the past few decades. The share of the top 1% of the population in the country in the total national income was around 10% in the 1950s, but came down to less than 4% by the end of the 1970s before steadily climbing to 7% by the end of the 1990s. By the latest estimates, this went up to 13% for 2012, the highest since independence, but also, importantly, it almost doubled in the past 15 years.
• The increase in inequality has been one of the highest since independence and is much more than in any other country with a comparable per capita income or among developed economies. This also shows the inability of the state to tax the rich more.
• This has also contributed to a worsening fiscal situation by increasing exemptions, subsidizing the wealthy and through various tax giveaways.
• The data also indicate that India is the country with the lowest tax-to-GDP ratio among countries with a similar per capita income on a purchasing power parity basis. It is also the country with the lowest expenditure-to-GDP ratio. Expenditure on essential public services such as agriculture, nutrition (Integrated Child Development Services, mid-day meals), education and health has been substantially cut.

What’s the problem?

Successive governments at the centre have failed to tax the rich considerably. The problem has been aggravated by subsidies provided to the rich. Clearly, the subsidies to the rich are not only bad on the equity principle, but are also hurting the capacity of the government to spend more on essential sectors such as health and nutrition and education. Due to this, not only has our expenditure on a per capita basis on these sectors been among the lowest, but has also remained stagnant for the past two decades.

India’s tax-to-GDP ratio is also not picking up. The current tax-to-GDP ratio of around 16.8% is roughly the same as it was at the beginning of economic reforms in 1991. The primary reason for the low tax collection has been the low tax base, as admitted by the finance ministry in the economic survey. The Indians who pay tax account for only 2% of the population. This is not only low compared to the ratio of voters in an economy but also low compared to the quantum of high-value transactions.

What’s the solution?

As recommended by the Economic Survey, bringing more people into the tax net through some form of direct taxation will help. In some instances, higher tax rates can also be considered by the government. Experiences of developed countries can be considered here. Most of post-war Europe
and other developed countries had an effective tax rate higher than 60% during the time their economies were being built after the war. On the other hand, India continued to lower tax rates not just on personal income but also on corporate entities, with the finance minister recently announcing a reduction in the corporate tax rates to 25% from the existing 30% by 2019.

**Conclusion:**

The approach of the government in the past few years regarding tax collection has not been very impressive. Overall, this has largely affected the poor in the country. Hence, it is high time for the government to take up the matter seriously and address the issues concerned.

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**Insights into Editorial: Why India needs a uniform civil code**

**Livemint**

**04 July 2016**

The Union Law Ministry recently asked the Law Commission to examine in detail all issues pertaining to the Uniform Civil Code and submit a report to the government. With this, issues related to the implementation of UCC across India have once again come to the fore.

**What is uniform civil code?**

Uniform civil Code is a proposal to have a generic set of governing laws for every citizen without taking into consideration the religion.

**What the constitution says?**

Article 44 of the Constitution says that there should be a Uniform Civil Code. According to this article, “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India”. Since the Directive Principles are only guidelines, it is not mandatory to use them.

**Historical background:**

Uniform Civil Code was one of the key issues debated during the writing of the Constitution, with passionate arguments on both sides. However, unable to arrive at a solution, a directive principle was struck regarding this in the constitution.

- But, several members of the Constituent Assembly disagreed vehemently with the compromise and argued that one of the factors that have kept India back from advancing to nationhood has been the existence of personal laws based on religion which keep the nation divided into watertight compartments in many aspects of life.
- Though, after independence, few governments tried to have a UCC, religious conservative groups did not allow governments to proceed ahead in this regard.

**India needs a Uniform Civil Code for the following reasons:**

- A secular republic needs a common law for all citizens rather than differentiated rules based on religious practices.
- Another reason why a uniform civil code is needed is gender justice. The rights of women are usually limited under religious law, be it Hindu or Muslim. The practice of triple talaq is a classic example.
- Many practices governed by religious tradition are at odds with the fundamental rights guaranteed in the Indian Constitution.
Courts have also often said in their judgements that the government should move towards a uniform civil code including the judgement in the Shah Bano case.

**Why it is difficult to have a UCC?**

India being a secular country guarantees its minorities the right to follow their own religion, culture and customs under Article 29 and 30. But implementing a Uniform Code will hamper India’s secularism.

**Concerns:**

What is unfortunate is the demand for UCC has always been framed in the context of communal politics. Many see it as majoritarianism under the garb of social reform.

**Way ahead:**

The government cannot remain silent on the issue anymore. It is obvious that the government would have to face several challenges from many conservative groups on this front. But, it will have to work hard to build trust, and more importantly, make common cause with social reformers rather than religious conservatives, as has been the wont of previous governments.

- One strategic option is to follow the path taken after the fiery debates over the reform of Hindu civil law in the 1950s.
- Rather than an omnibus approach, the government could also bring separate aspects such as marriage, adoption, succession and maintenance into a uniform civil code in stages.
- A comprehensive review of several other laws in the context of gender justice would also do well.

**Goa model:**

The civil law in Goa—derived from the Portuguese Civil Procedure Code of 1939—could be a useful starting point for a national debate. Goa continued with its practice of treating all communities alike even after its entry into the Indian Union.

**Conclusion:**

Government’s move to refer this matter to the law commission is hopefully the first step towards the implementation of something that has been delayed for far too long. It is now 66 years since the Constitution came into force. It is high time there was a decisive step towards a common civil code.

**Insights into Editorial: Harmonising RTE with minority schools 05 July 2016**

Setting aside Supreme Court’s judgment on RTE, the Kerala High Court, in a remarkable verdict in June 2016, ruled that Section 16 of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act), that mandates schools to not detain any child before s/he completes elementary education, is applicable to minority educational institutions as well (Sobha George v. State of Kerala).

**What is Right to Education (RTE)?**

The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine.

- The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full
time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.

- Article 21-A and the RTE Act came into effect on 1 April 2010. With this, India moved forward to a rights based framework that casts a legal obligation on the Central and State Governments to implement this fundamental child right as enshrined in the Article 21A of the Constitution, in accordance with the provisions of the RTE Act.
- It is seen as the most historic development in universalisation of elementary education in the country. It implies that every child in the age group of 6 to 14 years has Right to elementary education. They are entitled for free and compulsory education.

**Key features:**

- The RTE Act provides for the Right of children to free and compulsory education till completion of elementary education in a neighbourhood school.
- It clarifies that ‘compulsory education’ means obligation of the appropriate government to provide free elementary education and ensure compulsory admission, attendance and completion of elementary education to every child in the six to fourteen age group. ‘Free’ means that no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education.
- It makes provisions for a non-admitted child to be admitted to an age appropriate class.
- It specifies the duties and responsibilities of appropriate Governments, local authority and parents in providing free and compulsory education, and sharing of financial and other responsibilities between the Central and State Governments.
- It lays down the norms and standards relating inter alia to Pupil Teacher Ratios (PTRs), buildings and infrastructure, school-working days, teacher-working hours.
- It provides for rational deployment of teachers by ensuring that the specified pupil teacher ratio is maintained for each school, rather than just as an average for the State or District or Block, thus ensuring that there is no urban-rural imbalance in teacher postings. It also provides for prohibition of deployment of teachers for non-educational work, other than decennial census, elections to local authority, state legislatures and parliament, and disaster relief.
- It provides for appointment of appropriately trained teachers, i.e. teachers with the requisite entry and academic qualifications.

**Supreme Court’s judgment:**

The Supreme Court had exempted minority schools from the purview of the RTE Act in Pramati Education and Cultural Trust v. Union of India (2014). The court had observed that the Right to Education (RTE) Act is not be applicable to aided or unaided minority schools.

**High Court’s view:**

However, the High Court located this obligation not in the Act but under Article 21 of the Indian Constitution, which guarantees right to life and liberty. It ruled that no-detention policy (NDP) is in the “best interest” of the child and could independently be considered a fundamental right.

**Significance of High Court’s judgment:**

The significance of the Sobha George verdict lies not only in making certain provision of the RTE Act applicable to minority schools but the strategy employed for this. The courts reasons: “RTE Act has no application in a minority school, whether aided or unaided. However, the Court has to examine whether Section 16 of RTE Act is a mere statutory right or can be treated as a fundamental right expressed in the form of statutory provision.” A key takeaway from this judgment is the recognition that certain provisions of the RTE Act have a universal appeal, even if
the Act lacks it. However, it is completely within judicial discretion to determine which provisions are these.

The Pramati judgment was erroneous on two counts.

* First, it failed to notice that besides the 25% quota in Section 12(1)(c), the RTE Act also has provisions on infrastructural norms, pupil-teacher ratio, prohibition on screening tests and capitation fee and ban on corporal punishment. Far from annihilating the ‘minority character’, these provisions benefit both the students and community.
* Second, it did not consider the fact that the government-aided minority schools stand on a different footing from their unaided counterparts and are more amenable to regulations than the latter.

Are rights guaranteed under Article 30 absolute?

The generic scope of right to education seems to conflict with the specific contexts of the rights of minorities to establish and administer educational institutions of their choice under Article 30. That right, however, is not absolute. Freedom to ‘administer’ a school cannot include ‘mal-administering’ it.

Regulations for maintaining academic standards, ensuring proper infrastructure, health and sanitation, etc. could be imposed on minority schools as well. Further, a government-aided minority school cannot discriminate against students on grounds of religion, race, caste, language in the matters of their admission (Article 29(2)).

Way ahead:

The Sobha George judgment opens possibilities of applying different provisions of the RTE Act on minority schools through the Article 21 route. It also simultaneously forces a rethink on the role of judicial precedents.

* However, two contrasting judgments on the same issue have made the overall position of law unclear. The Sobha George case may immediately benefit thousands of children in Kerala, yet conflicting judgments adversely affect realisation of rights of all children equally.
* Therefore, a ‘constitutionally-permissible balance’ between right to education and minority rights requires an interpretation that makes them mutually reinforcing rather than irreconcilable.

What needs to be done now?

The Supreme Court has to re-examine the positive and the negative aspects of educational rights of minorities and appreciate the special case for guaranteeing right to elementary education universally and equitably.

Conclusion:

The problem with a judgment like Pramati is that for the issues it addresses, it either can overstay or is overruled. It might also lead to judicial conflicts and confusions. Hence, it is the responsibility of the Supreme Court to thoroughly re-examine the issue.
Insights into Editorial: Why RBI governors need a longer tenure

06 July 2016

A survey conducted by the Bank of International Settlements in 2009 showed that the average tenure of a central bank governor worldwide is between five and six years. However, the RBI governor has the shortest tenure among the heads of major central banks, with the possible exception of Brazil, where no fixed term is specified.

What is the main concern?

According to experts, a three-year term for the central bank chief is not sufficient.

How RBI governor is appointed in India?

In India, the appointment process is entirely a political one. Though an Appointments Committee is the formal vehicle designated to shortlist candidates for the job, in reality, the Prime Minister’s Office chooses the governor after consulting the finance ministry and the outgoing governor.

Moreover, there are no stipulations in Indian law regarding the qualification of governors, or even for those who will be nominated by the government for India’s first monetary policy committee. An economics or finance background is not de riguer for the job, as is evinced by the record of those who have been appointed to the top job.

Why longer tenure is necessary?

- Since India is moving to a new rules-based monetary policy framework, a longer and more certain tenure is necessary.
- Apart from monetary policy, RBI also looks after banking supervision, currency market, and has an interest in maintaining overall financial stability in the economy. Hence, a longer tenure will allow the governor to plan better.
- A more clearly defined term for the governor will also help reduce uncertainty in financial markets.
- Various studies have also shown how central bankers who lived under the fear of recall were less effective in their duties.
- A fixed term is also widely seen as a mechanism to reduce the vulnerability of the central banker to political pressure.

Worldwide practice:

Among the developed countries, the chairman of the US Federal Reserve is appointed for a term of four years which can be renewed, while the governors of the Bank of England serve a much longer term. The president of the European Central Bank has a non-renewable term of eight years.

Way ahead:

Central bank chiefs are normally appointed by the political leadership all over the world, but their appointment does not necessarily have to be politicised. Any government should avoid uncertainty by clearly defining the term of the governor.

- However, longer terms by themselves don’t necessarily translate into better outcomes. What is perhaps needed is a balance. Ideally, the term should not be so short that it hampers longer-term thinking, and it should not be too long to block new ideas.
- The new monetary policy framework seems to further complicate matters. The government has amended the RBI Act to create a monetary policy committee (MPC) that will have a term of four years. The inflation target will be decided by the finance ministry every five years. Clearly, a
three-year term for the RBI governor does not make sense in this context. It will lead to misaligned incentives.

**What would be an appropriate term for the RBI governor?**

There is no clear indication of what is the optimum tenure for a central bank chief. The economic literature also doesn’t offer much guidance in this respect.

- However, a five-year term for the governor will be more appropriate, and consistent with both the political cycle and the review of the inflation target.
- This will also provide continuity when the term of MPC members end. It will strengthen the independence of the central bank if the term of the governor is non-renewable.
- It will also help if the five-year term of the governor ends 12-18 months after the general elections so that there is stability at one end of the policy spectrum.

**Conclusion:**

Since India is changing the way monetary policy will be conducted, this is a good time to increase the minimum tenure of an RBI governor to five years.

**Insights into Editorial: Recognizing urban India**

**07 July 2016**

The ministry of urban development recently directed state governments to convert *census towns to urban local bodies* to allow for planned development and efficient service provision.

**What are census towns?**

Census towns are areas that are *governed by village panchayats but are recognized by the census of India as being urban*. According to the 2011 census, there are 3,894 census towns in India spread across states.

**Concerns:**

Urbanization has an important role to play in a country’s economic growth and so it is critical to get it right. However, the extent of urbanization in India is still widely underestimated. This underestimation has led to a host of problems—from misallocation of resources to unsafe development of densely populated clusters.

**Why it is difficult to convert census towns to urban local bodies?**

The *ultimate decision to convert census towns to statutory urban local bodies rests with state governments*. Municipal laws in some states specify guidelines such as population and density thresholds for notifying areas as urban local bodies, but these guidelines vary widely.

- For instance, Tamil Nadu and Maharashtra have population thresholds of 30,000 and 25,000, respectively, for classifying an area as urban, whereas states such as Kerala and Punjab have no such criteria.
- Also, these guidelines are not binding and state governments can exercise discretion in notifying areas.

**Why it is necessary to convert census towns to urban bodies?**

- In India, at the state level, the extent of areas governed as urban has a weak relationship with income, poverty and population working in non-agricultural activities, all of which are thought to be correlates of urbanization.
• Having differing and flexible guidelines makes sense given the heterogeneity across states. But differing guidelines are only meaningful if they are able to capture the true urban and rural characteristics of places across states. But this is not the case in India. Hence, to bring in uniformity it is necessary to convert census towns to urban local bodies.

**Extent of urbanization in India:**

According to an IDFC Institute paper, only 26% of India is governed by urban local bodies as of 2011. The rate varies across states with small hill states such as Mizoram (37%), Nagaland (26%) and Manipur (25%) surprisingly having a higher percentage of its population governed as urban than larger states such as West Bengal (23%), Bihar (11%) and Kerala (16%).

According to the census definition, India is 31% urban. But if Ghana’s definition of urban is applied, India is 47% urban, and if Mexico’s definition is applied, India is 65% urban. The differences in urbanization rates are even starker at a subnational level. For instance, Kerala is an anomaly and goes from being around 16% urban as per the administrative definition to over 99% urban using Ghana’s and Mexico’s definitions.

**Way ahead:**

This desire to stay rural may stem out of perceived advantages that are enjoyed by rural areas, such as access to funding through rural development schemes or lower taxes. However, these advantages may not necessarily exist. In fact, according to few recent studies, areas that are urban in nature but governed by panchayats make disproportionately more use of the Mahatma Gandhi National Rural Employment Guarantee Scheme. Thus, while staying rural may not confer the benefits some imagine they will receive, the real losers from the state governments’ actions are the de facto urban areas that are deprived of the benefits of planned development and amenities and services provided to officially urban settlements.

**Conclusion:**

India cannot afford to govern its settlements in such an arbitrary manner, and the ministry of urban development’s move is one in a series of many steps required to address the lacunae in the current rural-urban categorization system, prevent misallocation of resources, provide efficient services and governance structures, and leverage the ongoing structural transformation to boost economic development. India is more urban than we think. Finally, policymakers are coming round to reckoning with this reality.

**Insights into Editorial: Why the Chilcot report is vital**

**08 July 2016**

Sir John Chilcot’s long-awaited report into the UK’s role in the 2003 invasion of Iraq and its bloody aftermath is now published. Journalists and experts are now poring over the report for insights into what Chilcot concluded had been a military adventure based on flawed intelligence following which the occupation of Iraq had been “mishandled at every level”.

• The Chilcot inquiry launched in 2009 as British troops withdrew from Iraq, tasked with investigating the run-up to the 2003 US-led invasion and the subsequent occupation.

**What is the Chilcot report?**

The report is the culmination of the Chilcot inquiry into the decisions that brought Britain into the US-led invasion of Iraq in 2003, and Britain’s subsequent role in occupied Iraq. The inquiry was announced in 2009 by then Prime Minister Gordon Brown.
Why has it taken so long to publish?

The report was initially slated for publication in 2014, but lengthy negotiations with the Americans and the ‘Maxwellisation’ process – that is, allowing those criticised in the report a right of response – held things up. Concerns about releasing the report in the run-up to the 2015 general election were also raised, and so the report was pushed back until July 2016.

Who conducted the inquiry?

The inquiry was led by Sir John Chilcot, who was assisted by military historian and academic Sir Lawrence Freedman, historian Sir Martin Gilbert, Sir Roderic Lyne, Britain’s former ambassador to Russia and the UN, and John Major’s former private secretary and Baroness Prashar, member of the Joint Committee on Human Rights and chairwoman of the Judicial Appointments Commission. The inquiry was advised by General Sir Roger Wheeler, ex-chief of the British Army’s General Staff and former President of the International Court of Justice Dame Rosalyn Higgins.

What restrictions has the committee faced?

Evidence would not be made public if it would endanger the national or economic interests of the UK; endanger the lives of anyone mentioned or was judged not to be in the public interest.

What happened?

In 2003, a US-led coalition invaded Iraq and toppled the regime of Saddam Hussein. The invasion began in March that year and Hussein was captured by December. Britain’s involvement in the war was hugely contentious, with many MPs, including from the governing Labour party, voting against military action.

- In the absence of a concrete plan for the aftermath of the downfall of Hussein's regime — he had been in power since the 1970s — Iraq sank further into chaos, as sectarian violence between Sunnis and Shia engulfed the country. American and British troops, who continued to patrol the streets of major cities in the immediate aftermath, became targets of insurgent groups.
- It was only in 2011 that the U.S. and Britain formally ended their military presence in Iraq, by which time hundreds of thousands of civilians, tens of thousands of insurgents, and thousands of coalition troops (including 179 British troops) had died.
- Public pressure began to build for a full parliamentary inquiry. In 2009, the then-prime minister Gordon Brown announced that an independent inquiry would be launched in order to learn lessons from the Iraq war. It would be chaired by Sir John Chilcot. The Chilcot report, finally published seven years later, is the end result of that inquiry.

What did the inquiry find?

Sir John Chilcot said “Britain joined the 2003 invasion of Iraq before peaceful options had been exhausted”, and that Britain’s policy was “based on flawed intelligence which was not challenged and should have been”. He also said that Saddam Hussein did not pose an imminent threat to the UK in 2003, that there was no definitive proof Iraq had WMDs and that the entire report is an “account of an intervention that went badly wrong”.

What the report says?

The Report leaves no ground for doubt about Mr. Blair’s culpability. It is clear that the U.K. chose to join the invasion of Iraq in March 2003 before all peaceful options for disarming Saddam had been exhausted, thus establishing that war at that time was not, as Mr. Blair claims, a last resort.

- There was no imminent threat from the Iraqi leader and with a majority of the United Nations Security Council supporting UN inspections and monitoring, Mr. Blair’s judgment about the severity of the threat posed by Iraq “were presented with a certainty that was not justified”, and intelligence that had “not established beyond doubt” that Saddam was proceeding with the
manufacture of chemical and biological weapons. In his presentation to the British Parliament just prior to the invasion, these were details that Mr. Blair hid.

- The legal basis for military action was “far from satisfactory”, the report notes. In taking this action the U.K. “undermined the authority of the United Nations Security Council.” The report is equally critical on military planning, establishing that three military brigades were not properly prepared, and the risks not “properly identified nor fully exposed” to Ministers.
- Finally, planning and preparations for the post-Saddam period were “wholly inadequate,” the report states. The U.K. government “failed to achieve the stated objectives it had set itself in Iraq.” As a consequence of this, more than 200 British citizens died, and by July 2009, 150,000 Iraqis had died and more than one million were displaced, figures that continue to rise till date.

**Why this is important?**

Tens of thousands of Iraqis died during the conflict and the brutal sectarian war that followed, while 179 British soldiers also lost their lives — many of whose relatives are still searching for answers. The invasion was controversial at the time as it did not have explicit approval from the UN Security Council, while claims that Iraqi leader Saddam Hussein had weapons of mass destruction proved unfounded.

**So what happens next?**

Many, including veterans of the war and families of the soldiers who died in Iraq, alongside organizations like Stop the War and Greenpeace, are calling for the report to be a first step in legal and political action against former PM Tony Blair. The International Criminal Court is also looking at the Chilcot Report to see if its prosecutors find grounds to charge Blair on. And although the former PM cannot be charged with a war crime in the UK, he could be accused of misleading parliament, which is a prosecutable offense.

**Conclusion:**

The Iraq Inquiry is not a court and was not set up to make a legal case against Mr. Blair and individuals in his government who took wrong decisions that led to such disastrous consequences. But the painful reality of life after an unjust war is an experience that Iraq’s people suffer every day. There is no justice that can undo what military action conducted on false premises against their country in 2003 has wrought.

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**Insights into Editorial: Toothless tiger NHRC needs more powers: Apex court**

**09 July 2016**

The Supreme Court recently said it did not augur well for a democracy like India to have a National Human Rights Commission (NHRC) which was helpless to redress human rights violations as states seldom implemented its recommendations.

- NHRC has also informed the court that it had no power to act against persons or authorities who did not follow the guidelines laid down by it nor did it have the power to issue directives or pass orders but could only make recommendations.

**Background:**

While dealing with the alleged extra-judicial killings of 1,528 persons in Manipur by police and armed forces, the court proposed to examine the grievance of NHRC that it has become a *toothless tiger*. The court has proposed to consider the nature of guidelines issued by the NHRC – whether they are binding or only advisory.
All you need to know about NHRC:

The National Human Rights Commission (NHRC) of India is an autonomous public body constituted on 12 October 1993 under the Protection of Human Rights Ordinance of 28 September 1993. It was given a statutory basis by the Protection of Human Rights Act, 1993 (TPHRA).

- The NHRC is the national human rights institution, responsible for the protection and promotion of human rights, defined by the Act as “rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants”.

Composition:

- It consists of a Chairman and 4 members. Chairman should be a retired Chief Justice of India. Members should be either sitting or retired judges of the Supreme Court or a serving or retired Chief Justice of a High Court and 2 persons having practical knowledge in this field.
- Ex officio members are the chairmen of National Commission for Scheduled Caste, National Commission for Scheduled Tribes, National Commission for Minorities and National Commission for Women.

- **Appointment:** The chairman and members are appointed on the recommendation of a 6 member committee consisting of Prime Minister, Speaker of the Lok Sabha, Deputy Chairman of the Rajya Sabha, leaders of opposition in both the houses of parliament and Union Home Minister.
- **Term:** Term of the chairman and members is 5 years or 70 years whichever is earlier. After retirement they are not eligible for further reappointment.
- **Removal:** President has to refer the matter to Supreme Court and if after enquiry Supreme Court holds it right then they can be removed by the President.

Why NHRC is called as a toothless tiger?

It is because NHRC investigates human rights violation cases, sometimes in remote areas, with very limited resources. The evidence collected is put to forensic judicial adjudication by its chairman and members, who are former judges. But at the end, when NHRC arrives at a finding, it can only recommend remedial measures or direct the state concerned to pay compensation.

Problems being faced by NHRC and other State Human Rights Commissions:

- Most human rights commissions are functioning with less than the prescribed Members. This limits the capacity of commissions to deal promptly with complaints, especially as all are facing successive increases in the number of complaints.
- **Scarcity of resources** is another big problem. Large chunks of the budget of commissions go in office expenses, leaving disproportionately small amounts for other crucial areas such as research and rights awareness programmes.
- NHRC is deluged with too many complaints. Hence, in recent days, NHRC is finding it difficult to address the increasing number of complaints.
- As human rights commissions primarily draw their staff from government departments – either on deputation or reemployment after retirement – the internal atmosphere is usually just like any other government office.
- **Strict hierarchies** are maintained, which often makes it difficult for complainants to obtain documents or information about the status of their case.
Problems with the current Protection of Human Rights Act, 1993:

- NHRC’s recommendations do not percolate to the ground level as the NHRC does not have the backing of the Protection of Human Rights Act to penalise authorities which do not implement its orders.
- The Act does not extend to Jammu and Kashmir and hence the commission has to keep its eyes closed to human rights violations there.
- The Act does not categorically empower the NHRC to act when human rights violations through private parties take place.
- The Act requires that three of the five members of a human rights commission must be former judges but does not specify whether these judges should have a proven record of human rights activism or expertise or qualifications in the area. Regarding the other two members, the Act is vague, saying simply: “persons having knowledge and experience of human rights.”
- Under the Act, human rights commissions cannot investigate an event if the complaint was made more than one year after the incident. Therefore, a large number of genuine grievances go unaddressed.
- The powers of the National Human Rights Commission relating to violations of human rights by the armed forces have been restricted to simply seeking a report from the Government, (without being allowed to summons witnesses), and then issuing recommendations.

What can be done?

- The effectiveness of commissions will be greatly enhanced if their decisions are immediately made enforceable by the government. This will save considerable time and energy as commissions will no longer need to either send reminders to government departments to implement the recommendations or alternatively to approach High Courts through a cumbersome judicial process to make the government take action.
- Governments should seriously consider the recommendations made by NHRC as NHRC’s orders are passed by persons who had long training and experience as judges of the Supreme Court and high courts. Directives are issued by them after sifting chaff from grain, which they are judicially trained to do.
- Also, a large number of human rights violations occur in areas where there is insurgency and internal conflict. Not allowing NHRC to independently investigate complaints against the military and security forces only compounds the problems and furthers cultures of impunity. It is essential that commission is able to summons witnesses and documents.
- As non-judicial member positions are increasingly being filled by ex-bureaucrats, credence is given to the contention that NHRC is more an extension of the government, rather than independent agency exercising oversight.
- NHRC also needs to develop an independent cadre of staff with appropriate The present arrangement of having to reply on those on deputation from different government departments is not satisfactory as experience has shown that most have little knowledge and understanding of human rights issues.

Conclusion:

An important point to be noted is that Human Rights Commissions are not the panacea for all problems related to the subject in a society. They tend to be effective only under a given set of circumstances, but most importantly, a lot depends on the level of funding, functional independence, and institutional autonomy guaranteed to the HRC. It is nearly 15 years since the National Human Rights Commission (NHRC) was established in India through the adoption of the Protection of Human Rights Act, 1993, by Parliament. Now is a good time to examine not only the functioning and effectiveness of the NHRC and the SHRCs but also to identify the central challenges relating to human
rights in the future and work towards tackling them. It is important that Human Rights Commissions (HRCs) succeed in their efforts to promote and protect human rights.

**Insights into Editorial: Ending impunity under AFSPA**

11 July 2016

The Supreme Court of India recently ruled that the **armed forces cannot escape investigation for excesses in the course of the discharge of their duty even in “disturbed areas”**. This was observed by the court while hearing petitions demanding an inquiry into 1,528 deaths in counter-insurgency operations and related incidents in Manipur. In disturbed areas, **security personnel enjoy statutory protection for their use of “special powers”**.

**Important observations made by the court:**

The provisions of the Armed Forces (Special Powers) Act and the purported immunity it offers to the use of force “even to the extent of causing death” are not invincible. Such legal protection has to yield to larger principles of human rights, and no allegation of the use of excessive or retaliatory force can be ignored without a thorough inquiry. This is a requirement both of democracy and for the preservation of the rule of law.

**What is Afspa?**

Afspa, enacted in 1958, gives powers to the army and state and central police forces to shoot to kill, search houses and destroy any property that is “likely” to be used by insurgents in areas declared as “disturbed” by the home ministry. Security forces can “arrest without warrant” a person, who has committed or even “about to commit a cognizable offence” even on “reasonable suspicion”. It also protects them from legal processes for actions taken under the act.

**Which states are under Afspa?**

It is in force in Assam, Jammu and Kashmir, Nagaland, Manipur (except the Imphal municipal area). In Arunachal Pradesh, only the Tirap, Changlang and Longding districts plus a 20-km belt bordering Assam come under its purview. And in Meghalaya Afspa is confined to a 20-km area bordering Assam.

**What are ‘disturbed’ areas?**

The state or central government considers those areas as ‘disturbed’ “by reason of differences or disputes between members of different religious, racial, language or regional groups or castes or communities.”

**How is a region declared ‘disturbed’?**

Section (3) of the Afspa **empowers the governor of the state or Union territory to issue an official notification in The Gazette of India, following which the Centre has the authority to send in armed forces for civilian aid.** Once declared ‘disturbed’, the region has to maintain status quo for a minimum of three months, according to The Disturbed Areas (Special Courts) Act, 1976.

**What is state government’s role?**

The state governments can suggest whether the act is required to be enforced or not. But under Section (3) of the act, their **opinion can be overruled by the governor or the Centre.**
Is the act uniform in nature?

Initially, it was meant only for Assam and Manipur, where there was an insurgency by Naga militants. After the reorganisation of the northeast in 1971, the creation of new states like Manipur, Tripura, Meghalaya, Mizoram and Arunachal Pradesh paved the way for the Afspa to be amended, so that it could be applied to each of them. The amendments contain different sections as applicable to the situation in each state.

Why have AFSPA?

- The army is opposed to the withdrawal of Afspa. Many argue that removal of the act will lead to demoralising the armed forces and see militants motivating locals to file lawsuits against the army.

- Also, the forces are aware that they cannot afford to fail when called upon to safeguard the country’s integrity. Hence, they require the minimum legislation that is essential to ensure efficient utilization of combat capability. This includes safeguards from legal harassment and empowerment of its officers to decide on employment of the minimum force that they consider essential.

- The absence of such a legal statute would adversely affect organizational flexibility and the utilization of the security capacity of the state. This would render the security forces incapable of fulfilling their assigned role.

- AFSPA is necessary to maintain law and order in disturbed areas, otherwise things will go haywire. The law also dissuades advancement of terrorist activities in these areas.

Arguments against AFSPA:

- Critics say the undemocratic act has failed to contain terrorism and restore normalcy in disturbed areas, as the number of armed groups has gone up after the act was established. Many even hold it responsible for the spiralling violence in areas it is in force.

- Common people see it as ‘Right to Kill’ Act. Since its inception many Human Rights organizations and civil societies have been opposing it.

- The decision of the government to declare a particular area ‘disturbed’ cannot be challenged in a court of law. Hence, several cases of human rights violations go unnoticed.

- It is inhumane to make people live in curfew like conditions for their entire lives.

- The justice Jeevan Reddy Committee was set up in 2005 to review Afspa and make recommendations. It recommended that Afspa should be repealed and the Unlawful Activities Protection Act strengthened to fight militancy.

Conclusion:

It is high time that concerted and sincere efforts are continuously made by the four stakeholders — civil society in Manipur, the insurgents, the State of Manipur and the Government of India to find a lasting and peaceful solution to the festering problem, with a little consideration from all quarters. It is never too late to bring peace and harmony in society. The verdict is likely to have far reaching consequences in places where security forces have been insulated by Afspa to carry out counter-insurgency operations.
Insights into Editorial: Seven failures of economic liberalization

12 July 2016

2016 marks 25 years since the so-called “economic reforms” were launched in India in July 1991. By now, intentions behind policies and practices that characterized such reforms are well known, viz. radical deregulation, marketization and privatization of the industrial, technological and financial sectors, and an across-the-board induction of foreign direct investment and foreign institutional investment, and so on.

What necessitated such transformation?
Licence raj had the unintended consequence of giving birth to a vast and unending bureaucracy, significant public expenditure and the development of a few large corporations that would dominate the private sector. Besides, exports were encouraged while at the same time imports were discouraged.

What changes were introduced?
The external shock of 1991 set the stage for a fundamental mindset shift. The government no longer selectively removed restrictions and rules, though they were only selectively applied. The government also did away with licence raj, ended many public monopolies, and opened several sectors to automatic approval of foreign direct investment. It was an undeniable paradigm shift, and one that changed India dramatically.

The broad goals of this transformation were:
- To increase the productivity of investment of Indian industries.
- To improve the performance of the public sector in order to gain a competitive edge in a fast changing global economy.
- To achieve greater social equity.

Failures of economic liberalization:
The end of the licence raj and the opening up of the economy to private and foreign capital are some positive outcomes of reforms initiated in 1991. However, these reforms have some failures too.

- The share of manufacturing in the gross domestic product is 16.2% now. In 1989-90, the share was 16.4%. This shows that its share in the economy has not increased.
- The combined fiscal deficit of the centre plus the states, as a percentage of GDP, has risen beyond the 1991 level. In 2014-15, the combined fiscal deficit, as a percentage of GDP, was higher than it was in 1995-96. Hence, it has failed to curb the combined fiscal deficit.
- The central government’s gross tax revenues as a percentage of gross domestic product have also remained below the 1991-92 level.
- In 1990-91, capital expenditure accounted for 30% of total central government expenditure. The budget for the current fiscal year puts the share of capex at a mere 12.5%. Productive capital expenditure on infrastructure has not significantly improved.
- Economic liberalization has failed to provide secure and decent jobs to the mass of the population. In spite of all the reforms, the number of employees per non-agricultural establishment has been coming down steadily. It was an average of 2.39 employees per establishment in the 2013 economic census, compared to 3.01 persons in the 1980 economic...
census. This means the vast majority of the establishments in India are in the informal sector, with neither the capital nor the technology to improve productivity.

- Compared to neighbouring Bangladesh and Nepal, India’s performance in bringing down under-five mortality rates is not so encouraging.

**Conclusion:**

Widespread liberalisation of the economic policy regime was long overdue in 1991, and has played a positive role since, but its impact has run its course and the policy has recognisable limits. It’s now up to the government to address these failures.

**Insights into Editorial: Inflation targeting and credibility**

**13 July 2016**

The government, through **Finance Bill 2016**, amended the **RBI Act**. The act clipped the **central bank governor’s powers to set monetary policy**.

- The amendment removed the governor’s powers to singularly set monetary policy vesting them in a **six-member Monetary Policy Committee**. The process of setting up of the Monetary Policy Committee (MPC) was also recently set in motion.

**Problems with the recent amendment:**

The recent amendment to the RBI Act has not considered the original monetary agreement somewhat. **Earlier agreement noted that the consumer price index (CPI) inflation target for financial year 2016-17 and all subsequent years shall be 4% with a +/-2% band.** However, the recent amendment to the Act, which will supersede the agreement signed early last year, notes that the **inflation target will be determined once every five years**. The amendment doesn’t mention the inflation target range.

**Why it is necessary to have inflation target range?**

- Abandoning this reform will be hugely embarrassing for the government after it agreed to it just early last year.

- Earlier proposed target inflation range of 2-6%—outside of which the central bank will have to write to the government for the reasons for missing the inflation target and also suggest time-bound remedial actions—is already too wide.

- The absence of the inflation target range and a categorical signal that the inflation target will be only for five years suggest that the discipline of an inflation-targeting framework isn’t fully appreciated by the government.

- Also, according to few experts, current inflation target range of 2-6% is the widest among the main Asian inflation targeters. For example: Indonesia (3.5%), the Philippines (2-4%), Thailand (1-4%) and South Korea 2%.

**Problems associated with this move:**

This could offer room for some future government to live with **higher inflation in anticipation of slightly better near-term growth**, especially if it is worried about its political longevity. Politicians’ economic myopia will win, but the nation will lose if that approach leads to a boom-bust cycle.
How it will affect the role of MPC:

Absence of inflation target range is also expected to affect the objectivity of the government-appointed MPC members - revision in the current inflation target and /or its range.

Composition of the MPC:

The committee will have six members. Of the six members, the government will nominate three. The RBI Governor will chair the committee. The governor, however, will not enjoy a veto power to overrule the other panel members, but will have a casting vote in case of a tie. No government official will be nominated to the MPC.

- The other three members would be from the RBI with the governor being the ex-officio chairperson. Deputy governor of RBI in charge of the monetary policy will be a member, as also an executive director of the central bank. Decisions will be taken by majority vote with each member having a vote.
- The government nominees to the MPC will be selected by a Search-cum-Selection Committee under Cabinet Secretary with RBI Governor and Economic Affairs Secretary and three experts in the field of economics or banking or finance or monetary policy as its members.
- Members of the MPC will be appointed for a period of four years and shall not be eligible for reappointment.

Way ahead:

Instead of further compromising the credibility of the monetary framework to facilitate lower interest rates, the government should step up its supply-side efforts to deliver low and stable inflation. This has the potential to offer a win-win combination of lower trend inflation and higher sustained economic growth.

- The way to a significant and lasting downshift in interest rates, which in turn will boost growth, is a sustained decline in inflation, not forcing voters to live with higher-than-promised inflation. The 4% inflation target for early 2018 is ambitious but doable.

Conclusion:

The government’s institutional and supply-side reforms to achieve the inflation target so far have been disappointing. Revising the inflation target upwards to make up for that deficiency isn’t the right solution. In fact, such a revision would be the frankest admission of failure by the very government that agreed to it early last year.

Insights into Editorial: All you need to know about NATGRID

14 July 2016

Senior Indian Police Service (IPS) officer Ashok Patnaik has been appointed as the CEO of National Intelligence Grid (NATGRID) by the government. This shows that the present government is more serious about NATGRID. The appointment in the post of CEO, which has been lying vacant for several months, came a month after Prime Minister Narendra Modi reviewed the working of the Natgrid.

What is the NATGRID?

NATGRID is an ambitious counter terrorism programme, which will utilise technologies like Big Data and analytics to study and analyse the huge amounts of data from various intelligence and enforcement agencies to help track suspected terrorists and prevent terrorist attacks. It will connect,
in different phases, data providing organisations and users besides developing a legal structure through which information can be accessed by the law enforcement agencies.

**Background:**

NATGRID is a post Mumbai 26/11 attack measure. It aims to mitigate a vital deficiency — lack of real time information, which was considered to be one of the major hurdles in detecting US terror suspect David Headley's movement across the country during his multiple visits between 2006 and 2009.

**It’s role:**

- NATGRID will become a secure centralised database to stream sensitive information from 21 sets of data sources such as banks, credit cards, visa, immigration and train and air travel details, as well as from various intelligence agencies.

- The database would be accessible to authorised persons from 11 agencies on a case-to-case basis, and only for professional investigations into suspected cases of terrorism.

**Developments so far:**

In the first phase, 10 user agencies and 21 service providers will be connected, while in later phases about 950 additional organisations will be connected. In subsequent years, over 1,000 additional organisations will be connected.

- While the clearance for the Rs 3,400-crore project from the Cabinet Committee on Security (CCS) came in 2011, execution of the project slowed down after the exit of then home minister P Chidambaram in July 2012.

- Currently, there are around 70 personnel, drawn from both the government and private sectors, in NATGRID.

**How is it different from NCTC and NIA?**

Unlike the NCTC and the NIA which are central organisations, the NATGRID is essentially a tool that enables security agencies to locate and obtain relevant information on terror suspects from pooled data of various organisations and services in the country. It will help identify, capture and prosecute terrorists and help preempt terrorist plots.

**Criticisms:**

- NATGRID is facing opposition on charges of possible violations of privacy and leakage of confidential personal information.

- Its efficacy in preventing terror has also been questioned given that no state agency or police force has access to its database thus reducing chances of immediate, effective action.

- According to few experts, digital databases such as NATGRID can be misused. Over the last two decades, the very digital tools that terrorists use have also become great weapons to fight the ideologies of violence.

- The Snowden files have already revealed the widespread misuse in recent years of surveillance capabilities to compromise individual privacy and even violate national sovereignty.

**Why do we need NATGRID?**

The danger from not having a sophisticated tool like the NATGRID is that it forces the police to rely on harsh and coercive means to extract information in a crude and degrading fashion. After every
terrorist incident, it goes about rounding up suspects—many of who are innocent. If, instead, a pattern search and recognition system were in place, these violations of human rights would be much fewer.

- Natgrid would also help the police and the Intelligence Bureau keep a tab on persons with suspicious backgrounds. The police would have access to all his data and any movement by this person would also be tracked with the help of this data base.

**Conclusion:**

In its present form, NATGRID suffers from few inadequacies, some due to bureaucratic red tape and others due to fundamental flaws in the system. If the government takes enough measures to ensure that information does not fall through the firewalls that guard it, NATGRID has the potential to become India’s go-to grid for a 360-degree perspective to prevent and contain crises.

**Insights into Editorial: Beijing in choppy waters**

**15 July 2016**

China’s maritime claims, its reclamation projects and its attempts to control South China Sea were rendered illegal recently by the UN international court of arbitration. In a historic ruling, the Tribunal said China had no legal basis for its famed ‘Nine-Dash Line’; that it had interfered with the Philippines' fishing rights and it had no right to claim a 200-nautical mile exclusive economic zone.

**What was the case?**

Manila complained in 2013 after Beijing seized a reef about 225km from the Philippine coast. Manila rejected Beijing’s claim to sovereignty over waters within a “nine-dash line” appearing on Chinese maps. These dashes encircle 90% of South China Sea, an area the size of Mexico vital to global trade, rich in natural resources.

**Where is the South China Sea?**

The South China Sea is located at the western edge of the Pacific Ocean, to Asia’s southeast. It encompasses an area of about 1.4 million square miles and contains a collection of reefs, islands and atolls, including the Spratly Islands, Paracel Islands and Scarborough Shoal.
China’s claims:

Beijing claims 90% of the South China Sea, a maritime region believed to hold a wealth of untapped oil and gas reserves and through which roughly $4.5tn of ship-borne trade passes every year. Vietnam, Malaysia, Brunei and Taiwan also contest China’s claims to islands and reef systems closer to their territory than Beijing’s.

- China says it follows a historical precedent set by the “nine-dash line” that Beijing drew in 1947 following the surrender of Japan. The line has been included in subsequent maps issued under Communist rule.

What does international law say on this?

Manila complained under the 1994 UN Convention on the Law of the Sea ratified by both nations.

- It says a country has sovereignty over waters 12 nautical miles from its coast, control over economic activities in waters on its continental shelf and up to 200 nautical miles from its coast.
- China’s nine-dash line includes waters beyond these zones.

Significance of this case:

Besides China and the Philippines, Brunei, Indonesia, Malaysia, Taiwan and Vietnam claim parts of South China Sea. This ruling sets a precedent on such disputes. China had the most at stake, for it has transformed reefs into artificial islands with military runways and naval harbours.

Importance of South China Sea:

- It is a 3.5m sq km waterway.
- One of the world’s most strategically vital maritime spaces.
- More oil passes through here than the Suez Canal.
• More than $5 trillion in trade flows through its waters each year. That is a third of all global maritime commerce.
• The Strait of Malacca that links Indian and Pacific Oceans handles four times as much oil as Suez Canal.

**Why South China Sea is important for India?**

More than 55% of India’s trade passes through the Straits of Malacca which opens into the South China Sea. India has a huge stake in ensuring freedom of navigation and overflight.

**What is India’s stance?**

India follows the policy of not involving in disputes between sovereign nations. India, too, has commercial interest in the region. Vietnam has offered India seven oil blocks in its territory of SCS, a move that didn’t get down well with China. India has signed energy deals with Brunei too.

**Nine Dash line:**

The line drawn by China says it demarcates its maritime borders which means virtually the entire South China Sea belongs to China and its sovereignty over the islands within the line & surrounding waters within 12 nautical miles.

**Origin of the line:** Appeared on Chinese maps as 11-dash line in 1947 as Chinese navy took control of islands occupied by Japan during World War II. After communist China was formed in 1949, govt inherited all national maritime claims. Two dashes removed in 1950s bypassing Gulf of Tonkin as gesture to North Vietnam.

**China’s response:**

China has boycotted the tribunal saying it has no jurisdiction because sovereignty of reefs, rocks and islands in South China Sea is disputed. It has said it will not accept a ruling against it in a key international legal case over strategic reefs and atolls that Beijing claims would give it control over disputed waters of the South China Sea.

The Chinese president, Xi Jinping, said China’s “territorial sovereignty and marine rights” in the seas would not be affected by the ruling, which declared large areas of the sea to be neutral international waters or the exclusive economic zones of other countries. He insisted China was still “committed to resolving disputes” with its neighbours.

**Why does all this matter to the U.S.?**

The U.S. has no claims to the South China Sea, but has economic and political interests in the region. About $1.2 trillion of U.S.-traded goods travel through the South China Sea each year. Washington is also bound to a mutual defense treaty with the Philippines, in which it committed to provide defense assistance to the island nation. The Philippines and China are locked in a diplomatic spat over Mischief Reef, over which both countries claim ownership.

**What happens next?**

While the findings are legally binding, UNCLOS has no enforcement body and legal experts say it remains unclear what can be done when China ignores the ruling.

• Also, Chinese officials have not ruled out future military action to enforce their claims, including construction on the Scarborough Shoal or the imposition of an air defence zone over the area. They have warned against further expansion of the U.S. military presence in the area.
• Other claimants, particularly Vietnam, are being closely watched to see whether they will launch their own action against China. Hanoi has sought legal opinions on a possible case and its officials have yet to rule out such action.
WHAT IS UNCLOS?

Unclos is a treaty which outlines a system of territorial and economic zones that can be claimed from continental shelves, islands, islets, shoals, reefs, atolls, cays, sandbars, and other rocky outcrops.

Unclos allows a nation to:
- Exercise sovereignty over waters 12 nautical miles from its coast;
- Exercise economic rights over waters on a nation’s continental shelf, and up to 200 nautical miles from its coast, that is the EEZ.

Unclos cannot be used to determine who owns what land; in other words, it cannot determine sovereignty.

Conclusion:

For years now China has been creating artificial islands in the SCS, and sparked worldwide tensions when it unilaterally set up an Air Defence Identification Zone (ADIZ) in the East China Sea in 2013. In the post-ruling scenario, there is a risk that the hawks prevail in Beijing and Chinese maritime operations of this sort will escalate tensions further, risking a flashpoint. The fallout of this could be severe in the region, especially considering that in recent months the U.S. has sailed a Nimitz-class aircraft carrier, as well as guided-missile destroyers into the South China Sea. It is also possible that the ruling is an inflection point for strategic reset as it increases pressure on Beijing to engage bilaterally with the Philippines and others, and begin the hard work of untangling the dangerous mess of overlapping territorial claims.

Insights into Editorial: Expanding the Idea of India

16 July 2016

The Fundamental Duties are an important part of Indian Constitution. The duties prescribed, embody some of the highest ideals preached by our great saints, philosophers, social reformers and political leaders.

Background:

No Duties of the Citizen were incorporated in the original constitution of India at the time of its commencement in 1950. These duties were inserted subsequently by amending the constitution in 1976 (42nd Amendment Act) to regulate the behaviour of the citizens and to bring about excellence in all the spheres of the citizens.

Just as the directive Principle of State Policy lay down guidelines for the various governments, similarly the fundamental duties are calculated to draw the attention of the citizens towards the duties they owe to the nation and to one another.

Scope:

Fundamental duties are obligatory in nature. But there is no provision in the constitution for direct enforcement of these duties. There is no sanction either to prevent their violation. However the importance of fundamental duties can be gauged from the following facts:

- As rights and duties are the two side of the same coin, it is expected that one should observe one’s duties in order to seek the enforcement of one’s fundamental rights, in the context if a person approaches the court for the enforcement of any of his fundamental rights, the court may refuse to take a lenient view of him if it comes to know that the concerned individual has no respect for what is expected of him by the state as a citizen of the country.
- They can be used for interpreting ambiguous statutes. The court may look at the fundamental duties while interpreting equivocal statutes which admit of two constructions.

- While determining the constitutionality of any law, if court finds that it seeks to give effect to any of the duties, it may consider such law to be “reasonable”, and thereby, save such law from unconstitutionality.

**Significance of FDs:**

- They serve as a reminder to the citizens that while enjoying their rights, they should also be conscious of duties they owe to their country, their society and to their fellow citizens.

- They serve as a warning against the anti-national and antisocial activities like burning the national flag, destroying public property and so on.

- They serve as a source of inspiration for the citizens and promote a sense of discipline and commitment among them. They create a feeling that the citizens are no mere spectators but active participants in the realisation of national goals.

- They help the courts in examining and determining the constitutional validity of a law. In 1992, the Supreme Court ruled that in determining the constitutionality of any law, if a court finds that the law in question seeks to give effect to a fundamental duty, it may consider such law to be ‘reasonable’ in relation to Article 14 (equality before law) or Article 19 (six freedoms) and thus save such law from unconstitutionality.

- They are enforceable by law. Hence, the Parliament can provide for the imposition of appropriate penalty or punishment for failure to fulfill any of them. The importance of fundamental duties is that they define the moral obligations of all citizens to help in the promotion of the spirit of patriotism and to uphold the unity of India.

**Drawbacks:**

- The fundamental duties are not precisely defined. Their ambiguity and vagueness confound the citizens as to what they are supposed to do.

- Most significantly, they are merely moral postulates and do not have justiciability. They are not enforced by Law.

- Place in the constitution: It has been added in the Part IVA i.e. after Part IV (Which belongs to the Directive Principles of State Policy which are non-enforceable even with the court of law). It has given the Fundamental Duties a nature of non-obligation.

- Fundamental Duties prescribe duties for the citizens and not for the Government for better life and social progress.

- Fundamental duties miss some important duties such as cast vote, pay taxes, family planning etc.

**List of FDs:**

- To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.

- To cherish and follow the noble ideals which inspired our national struggle for freedom.

- To uphold and protect the sovereignty, unity and integrity of India.

- To defend the country and render national service when called upon to do so.
To promote harmony and the spirit of common brotherhood amongst all people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women.

To value and preserve the rich heritage of our composite culture.

To protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.

To develop the scientific temper, humanism and the spirit of inquiry and reform.

To safeguard public property and to abjure violence.

To strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement.

Subsequently, another duty was added by the 86th Constitutional Amendment Act of 2002: for a parent or guardian to provide opportunities for education of the child or ward between the age of six and fourteen (It was added when under Article 21A Right to education was made a FR).

What needs to be done now?

The scope of Fundamental Rights under Part III of the Constitution has seen significant expansion through judicial pronouncements; the right to free legal services to the poor, right to speedy trial and right to live in a clean and healthy environment are just a few examples. As a result, an imbalance has been created between the current set of Fundamental Rights and Duties. Hence, to balance this few additional Fundamental Duties should be added. This could help in balancing out the rights of its citizens and further make them more responsible towards the country’s development.

Following duties can be considered in this regard:

- **Duty to vote:** The state can take several steps to ensure that this duty to vote is made operational and effective. One method through which this may be achieved is by developing a system of incentives for voters and conversely disadvantages for those who abstain from performing their duty to vote. A very large section of people can be motivated to vote this way.

- **Duty to pay taxes:** The incorporation of the right to pay taxes as part of Fundamental Duties in the Constitution will shift the onus onto the taxpayer to pay taxes rather than the tax department to collect them.

- **Duty to help accident victims:** With the increase in the number of accidents, it has become pertinent for India to recognise this duty as one owed by its citizens towards each other.

- **Duty to keep the premises clean:** The most effective mechanism to tackle uncleanliness is to sensitise people about this duty. Therefore, it is imperative that a Fundamental Duty to this effect be added to the Constitution.

- **Duty to prevent civil wrongs:** It is not enough that a citizen refrains from committing wrong; he has a duty to see that fellow citizens do not indulge in the commission of wrongs.
✓ **Duty to raise voice against injustice:** The duties of a victim or a witness can be classified into two main categories, viz. duty to report a crime and duty to testify in court. The state must also on its part work to ensure that the fight to bring the offender to book does not become a Kafkaesque nightmare for the victim or witness.

✓ **Duty to protect whistle-blowers:** With the coming into force of the Right to Information Act, 2005, every citizen has become a “potential whistle-blower”. While the state has a great deal of responsibility in providing for their protection through appropriate legislative instruments, the responsibility to protect torchbearers of transparency vests on each one of us.

✓ **Duty to support bona fide civil society movements:** Citizens have a moral duty to organise themselves or support citizen groups so that the gaps in governance left by the executive can be filled and the rights guaranteed by the Constitution are made available to every citizen. Therefore, it is proposed that there must be an addition to Part IV-A of the Constitution to that effect.

✓ **Reinvigorating civic responsibility:** In the modern context, it has become increasingly important to instil a reinvigorated sense of civic responsibility among Indian citizens. This can be achieved by adding new duties to the existing list of Fundamental Duties while also laying emphasis on the performance of the existing ones.

**Conclusion:**

The significance of Fundamental Duties is not diminished by the fact that there is no punishment prescribed for not following them. Fundamental Duties constitute the conscience of our Constitution; they should be treated as constitutional values that must be propagated by all citizens.

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**Insights into Editorial: Autonomous driving and its shades of grey**

**18 July 2016**

Carmakers and tech companies are in a race to put autonomous vehicles on the road. However, recent accidents of few cars operating on autopilot mode expanded debate on the subject of readiness and safety of autonomous driving.

**What is autonomous driving?**

The U.S. Department of Transportation has defined five levels of autonomous driving capability. They range from Level 0, represented by conventional autos of today, to Level 5 where future cars, like the Google Pod-Car, will have no opportunity for driver involvement.

**Concerns:**

- Capability of most cars today having autopilot mode lie somewhere between Level 2 and Level 3, which means these cars are capable of some degree of autonomous driving but have many limitations. Such vehicles can confront many traffic situations, where the system’s capabilities will be overwhelmed.
Autopilot systems seek to offer the benefits of lower driving stress, which implies allowing the driver to be lulled into a sense of relaxation, only to be suddenly alerted to a situation that the autonomous system cannot manage.

**Human involvement:**

The use of an Autopilot function requires constant monitoring of the environment by the driver, who must remain ready to intervene and override the system when necessary. Human factors specialists will caution that such ambiguity is difficult to manage when one deals with a large population of drivers.

**Role of automakers:**

Automakers need to think twice before they allow customers to participate in “beta-testing” such safety-critical systems on public roads, even after suitable disclaimers.

**Regulatory oversight:**

Unlike aviation, where future technologies are subjected to rigorous evaluation prior to certification, regulations in autos often lag technological advances. In this era of explosive growth in electronics, connectivity and machine intelligence, automotive regulators have struggled to keep up. Regulations need to strike a balance between encouraging innovation and protecting customers from “prototypes” that represent work in progress.

While positions on where and how fully autonomous cars may be used or tested are taken by many western countries, they have been unable to address use and deployment of partial autonomous capability including parking assist, autonomous valet and autonomous lane tracking. This area needs urgent attention.

**Liability:**

Many industry experts believe that deployment of autonomy will be paced by evolving a legal understanding of liability and accountability. We can conceive of situations where accountability may be apportioned to the automaker, driver, owner, car-share user and even a third party who may cause an accident.

When the car is in autonomous mode, it will require considerable amount of data and understanding of software to apportion liability. A brand new domain of the ethics of decisions made while in autonomous mode remains poorly studied.

**What needs to be done now?**

Regulators must intervene. The technology is already being deployed, and it’s time to set standards for when an autonomous-driving feature has been tested enough and is considered safe enough for widespread use. Public roads shouldn't be uncontrolled laboratories for vehicle safety experiments.

- But this is no easy job. There is immense pressure from driverless-car supporters and safety advocates to get more autonomous technology on the road as soon as possible because, at the end of the day, self-driving cars will probably be much safer than cars driven by erratic, distracted humans.
Transportation safety regulators, as well as manufacturers, have to figure out how to do more real-world, independently verified stress-testing to hone the technology without people dying in the process.

Way ahead:
Drivers require a deeper and more subtle understanding of what each system can manage and where driver involvement is necessary. Over time, system capabilities will expand, incorporating technologies like Vehicle-to-Vehicle communication and improving safety margins.

- Automakers must be concerned about how system capabilities are communicated to customers. The subtle distinctions between “autonomous driving” and “driver assist functions” are important and convey very different sets of expectations to customers.
- In a short period of time, many technologies have gone from being dismissed as “science fiction” to being the latest “must-have feature.” The rapidity of these transformations, accelerated by a world of hyperbole and advertisement, often allows insufficient time for technology maturation.
- For life-critical systems, as opposed to shopping apps on a mobile device, it cannot be sufficient to merely tell the customer to download the latest upgrade.
- Complex situations cannot be managed with binary views on whether a technology is right or not. Evolution of technologies and human assimilation of new capabilities occur incrementally, leaving us to deal with periods of ambiguity and many shades of grey.

Conclusion:
The topic involves a complex interplay of technology evolution, human behaviour and a driver’s ability to manage ambiguities. Contrary to some chatter that has erupted, there can be no simple binary conclusions. We need to be prepared to deal with many shades of grey.

Insights into Editorial: Regulatory price controls reduce investments, not cost

19 July 2016

Inflation is said to be a monetary phenomenon as long as supply-side shocks are not there. Supply-side changes happen slowly and are greatly influenced by micro rigidities in that particular industry or segment. One such micro rigidity is regulatory control of prices. In the face of high inflation, the government tries to moderate it by controlling prices. Such control of prices looks like the right thing to do, but in fact it is exactly the wrong thing to do.

Performance of price regulated and unregulated price industries:
Comparing industries that are price regulated, such as electricity and railways, with those that are not, such as telecommunications and aviation, throws up interesting data.
- Over the past nine years, revenue realised by railways for carrying 1 person for 1 km has increased from 27 paise to 40 paise—a rise totalling 48%. If the same metric is applied for airline industries’ domestic business, we see a fall in cost of 9%, from Rs.5 to Rs.4.54.
- Looking at the cost of electricity using NTPC Ltd’s revenue realisation per kilowatt per hour as a proxy, it has risen from Rs.1.68 to Rs.3.22, an increase of 92%. While the cost of telecommunications, using Bharti Airtel Ltd’s domestic voice realisation per minute of usage, as a proxy, has fallen 65% from Rs.1.03 to Rs.0.36.
- Looking at the increase in ‘quantum of supply’ of these services, one notes that while the number of passenger kilometers of railways has nearly doubled, the number of domestic passenger kilometers flown by all airlines has tripled. The overall electricity produced in the country has gone up by 70%, while overall minutes of usage in telecommunications have gone up nearly 13-fold.
What can be concluded from the above analysis?
It can be said that the ‘unregulated price’ industries have not only seen a price fall but they have also witnessed an increase in supply. On the other hand, the ‘regulated price’ industries have seen price rise and a slower increase in supply.

Why price regulation is not good?
Price ceilings can have negative impacts on the marketplace. Suppliers are discouraged from producing more of an item when they can’t set their own prices, therefore, supply of key resources will decline, reducing availability to the market. Price ceilings also reduce the quality of products, as suppliers have less financial resources to reinvest in their business. Price regulation also does not seem to motivate companies enough to invest— as evidenced by the slower increase in their supply of services.

But, why is it necessary?
Price controls help prevent suppliers from engaging in price gouging, or charging outrageously high prices for limited goods or services simply because they are able to. Price ceilings are also beneficial for keeping the cost of living affordable during periods of high inflation. During high inflationary periods, prices increase faster than incomes, which reduce our purchasing power, making price control necessary for consumers to maintain their standard of living.

How to balance?
Economists theorize that in the long run consumers suffer, because price controls tilt the distribution of resources in favor of the rich and well connected. Price ceilings, for instance, cause shortages, because demand will increase as supply decreases. Therefore, governments should do away with long-term use of price controls, with the exception for brief use during periods of high inflation.

Conclusion:
Generally price controls distort the working of the market and lead to over supply or shortage. They can exacerbate problems rather than solve them. Nevertheless there may be occasions when price controls can help for example, with highly volatile agricultural prices. It’s appropriate for the government to have a right policy in this regard.

Insights into Editorial: A moment of truth for cricket in India

20 July 2016

The 2013 IPL scandal made judicial intervention necessary to curb the BCCI’s power, reform it structurally and operationally and introduce accountability. In this regard, the Supreme Court constituted Lodha panel to look in to the issue and recommend measures to reform it. However, recommendations proposed by the panel were not accepted by the BCCI and many state boards. This once again made Supreme Court’s intervention necessary. The Supreme Court recently accepted major recommendations of Lodha panel.

Major suggestions that have been upheld:
- Ministers have been barred from being a member of BCCI.
- The apex court accepted the recommendations of the panel to have a CAG nominee in the BCCI.
- The court also accepted the recommendation that one person should hold one post in cricket administration to avoid any conflict of interest and scrapping of all other administrative committees in the BCCI after CAG nominee comes in.
- Office bearers in BCCI should not be beyond age of 70 years.
- One state one vote recommendation accepted.
• The court said that the states like Maharashtra and Gujarat having more than one cricket association will have voting rights on rotational basis.
• The bench accepted the panel’s recommendation that there should be a player’s association in the BCCI and the funding of players’ association accepted while leaving it to the Board to decide the extent of funding.

Impacts of these recommendations:

One State One Vote: This changes the BCCI power equation. The Northeast, which has had minor presence in the cricketing stratosphere in India, will suddenly have five new members – Nagaland, Mizoram, Manipur, Meghalaya and Arunachal Pradesh. Influential power-brokers will try to woo these states to side with them. Traditional heavyweights like Mumbai and Baroda will lose importance as they wouldn’t be permanent voting members.

Age and tenure: This requires many BCCI old hands including N Srinivasan, Sharad Pawar, Niranjan Shah to move out. But it’s tough to imagine them going away for good. It remains to be seen whether they can find some way out to still be within touching distance of the power that they’ve enjoyed for so long. And whether we could see them pulling strings despite not holding the reins.

One man One Position: Powerful people will have to relinquish the multiple offices they hold. This could well open the doors for proxy voting and puppet heads running state associations.

No to ministers, bureaucrats: This will mean the BCCI will have fewer political heavyweights in its mix but not necessarily lesser political interference as those not in power could still retain sufficient clout through their own candidates.

CAG as auditor: Every expenditure of the board will have to go through the CAG and be accounted for. Funds to states will have to be cleared by CAG and there can be no arbitrary disbursement of funds to state associations. The board will have to ensure that there’s perfect coordination in the new-look hierarchy of the BCCI, which will now have a CAG and the CEO among other influential heads as part of their executive council.

Restructuring of IPL governing council: Franchises to be part of all important IPL decisions. For too long they have been kept outside the loop and been mere spectators despite being vital stakeholders with a lot of money at stake. Their presence could also open doors for potential conflicts of interest since it’s the governing council which has the final say on all matters from player retention to appointment of match officials.

Player Power: Cricketers to finally have a voice not just in the governance of the sport but also in how their own interests are safeguarded.

Why reform BCCI?

BCCI has always inhabited a grey area. It is private in nature but fields a team that represents the nation and utilizes taxpayer-funded services such as security arrangements on a massive scale. There is a case to be made for keeping it free from overt state interference; it is no coincidence that it is the only one of India’s apex sports bodies that has truly been successful. But the traditional opacity and arrogance of its functioning, coupled with corruption and administrative issues in various state boards, had left it in a position where state intervention was always just one misstep away.
Why BCCI is opposing?

Former BCCI president had pointed out that some of the measures were problematic. The cooling-off period, for instance, would mean a lack of administrative continuity, which comes with its own set of problems.

Way ahead:

There are now two options available to the BCCI. The first is stalling for time and seeking ways around the verdict in order to maintain the status quo. The second is a good faith effort to study the recommendations and consider how best to implement them. The latter would be preferable. The Supreme Court has allowed some leeway in how they are to be operationalized. The BCCI has the administrative nous and the resources to manage the transition effectively, and an obligation to its players to do so.

Conclusion:

The BCCI has shown that it recognizes the value of involving various stakeholders. Its response to the verdict will now determine if it is truly committed to the idea of deeper reform—as it has insisted it is—or more inclined to protect its turf. With the full impact of T20 cricket on the shape of the sport yet to be determined and major changes to Test cricket on the horizon, a streamlined, effective BCCI is crucial for the sport, and not just in India.

Insights into Editorial: India should become world’s first cashless country  

21 July 2016

Tax evasion has been a hot-button political issue in India for at least a decade. In a bid to evade taxes, many Indians deposit their money in illegal offshore accounts. In this regard, an investigative team of retired judges appointed by the government handed in the fifth of its reports recently.

Important recommendation made:

The report was full of worthy suggestions. What grabbed headlines, though, were its recommendations that **cash transactions of over Rs.3 lakh be banned and that nobody should be permitted to hold more than Rs.15 lakh in cash.** This is nothing but a cashless economy.

What exactly is a cashless economy?

It can be defined as a situation in which the flow of cash within an economy is non-existent and all transactions have to be through electronic channels such as direct debit, credit and debit cards, electronic clearing, payment systems such as Immediate Payment Service (IMPS), National Electronic Funds Transfer and Real Time Gross Settlement in India.

Benefits of cashless economy:

- Increased efficiency in welfare programmes as money is wired directly into the accounts of recipients.
- Efficiency gains as transaction costs across the economy should also come down.
- Reducing use of cash would also strangle the grey economy, prevent money laundering and even increase tax compliance, which will ultimately benefit the customers at large.
- Usage of cashless mechanisms would also ensure that loopholes in public systems get plugged, and the intended beneficiaries are able to avail the benefits due to them.
Barriers to cashless transactions:

- Lack of access to banking for a large part of the population as well as cash being the only means available for many.
- An overwhelming majority of retailers, suppliers and service providers belong to the unorganised, informal sector. They have neither the infrastructure to offer card-based transactions nor the inclination to encourage consumers to pay by credit cards or debit cards.
- The perception of consumers also sometimes acts a barrier. The benefit of cashless transactions is not evident to even those who have credit cards. Cash, on the other hand, is perceived to be the fastest way of transacting for 82% of credit card users. It is universally believed that having cash helps you negotiate better.
- Most card and cash users fear that they will be charged more if they use cards. Further, non-users of credit cards are not aware of the benefits of credit cards.

How can the situation be improved?

- By effective implementation of initiatives like Jan Dhan accounts.
- By putting in place robust payments mechanism to settle digital transactions.
- By giving incentives such as a service tax waiver when credit cards or other forms of digital settlements are used.
- The Reserve Bank of India too will have to come to terms with a few issues, from figuring out what digital payments across borders means for its capital controls to how the new modes of payment affect key monetary variables such as the velocity of money.
- RBI will also have to shed some of its conservatism, part of which is because it has often seen itself as the protector of banking interests rather than overall financial development.
- The regulators also need to keep a sharp eye on any potential restrictive practices that banks may indulge in to maintain their current dominance over the lucrative payments business.

Way ahead:

While this idea might sound extreme, some developed countries already have similar laws. Belgium, for example, which has the highest proportion of cashless transactions in the world—93%, according to MasterCard—has banned cash payments of over €3,000. And in India, pressure to move away from cash has been building among politicians and regulators.

Conclusion:

As cash gets used for fewer and fewer transactions, it will become easier for authorities to crack down on tax evasion. That’s why the government should focus more on enabling this transition than on draconian and hard-to-implement laws that threaten tax evaders with years of hard labour. The best way to eliminate black money is to get rid of the money.

**Insights into Editorial: A strategic diaspora security policy**

**July 22, 2016**

Strategic mass evacuations have become a recurrent feature with immense pressure on the government of the day “to do something very quickly”.

**Few recent incidents include:**

- In July 2016, the Indian government sent two Air Force C-17 Globemaster aircraft to evacuate about 500 Indians from Juba, South Sudan.
- In May, India evacuated its nationals from strife-torn Libya.
In another operation last year that got international recognition, India evacuated about 6,000 people, including citizens from 26 nations such as the US, France, UK, Russia, and neighbouring countries like Pakistan, Sri Lanka, Bangladesh, etc., from Yemen.

Main concerns:

In times of a crisis like an armed conflict that has the ability to escalate suddenly, the reaction time available with the ministry of external affairs, Indian embassies and missions abroad is extremely short. Quick and correct decisions should be taken. Quick and correct decision-making requires the availability of maximum number of operational assets to support a successful evacuation. However, the current lift capacity might fall woefully inadequate in times of a large-scale evacuation. Also, in a recent study by the Takshashila Institution, it has been estimated that it will take between 11 and 37 days under certain constraints, to evacuate less than half of the Indians from Riyadh using commercial as well as military capabilities. This shows how unprepared India is during the times of crisis.

What should the government do?

✔ **Firstly, secure rights to use assets that are not under direct government control.**
The earlier evacuations have primarily been driven by the Indian Navy, Air Force and public sector commercial airline Air India. There is a need for a policy in which the government can call for aircraft and ships which are under private operators. Thus, there should be a licensing clause with commercial airlines which mandates that they will make their aircraft and crew available during times of crises for evacuation operations anywhere in the world.

✔ **Secondly, have standing agreements between Indian embassies/missions abroad and private logistics operators.** Before evacuation by ship or aircraft, the widely dispersed diaspora may need to be transported by road to the centralized evacuation airport or port. A standing agreement with international logistics companies and transport operators with insurance liabilities will facilitate immediate movement of the people to the focal point of evacuation.

✔ **Thirdly, forge agreements with friendly countries for sea and air bases.**
Assuming that the host country bases are not usable for obvious reasons in times of crisis, the government should have arrangements with friendly countries in every region where there is a high concentration of diaspora. As evacuation by air would be the fastest, having access to safe airfields close to conflict zones will be highly desirable. This will need to take into consideration the issues of territoriality and sovereignty for operating Indian military and civil aircraft.

Conclusion:

It is timely to look at this issue strategically with an eye on capacity mapping and getting operating bases overseas. It also involves huge transaction costs that need to be borne by the exchequer. In order to bolster the capacity and have a strategic lift policy in place, the government should consider the above indicated steps and put them in place urgently.

**Insights into Editorial: Across the aisle: Defend the land, win over the people**

23 July 2016

With curfew continued in many parts of the Valley, life in Kashmir has come to standstill. Fresh incidents occur in the Valley every day. It is now widely acknowledged that Kashmir is more than land, it is people. With the violence erupted in Kashmir over the killing of Hizbul commander Burhan Wani, many fear the valley is going back a couple of decades when Pakistan sponsored militancy and separatist movement gained traction there.
What's the main concern now?
The overwhelming opinion now in Kashmir valley is that Article 370 was honoured in the breach and that the autonomy promised to J&K has been chipped away from time to time. The cry of azaadi is a response to this perception. Militancy is another.

Way ahead:
Advocating a rollback to 1947 is not a good idea now. Not all events and changes of the last 65 years need to be reversed. Not all the laws that were extended to J&K need to be withdrawn. Many of the changes will be acceptable to the people of J&K as beneficial to them. Many of the laws will be acceptable to them because they are based on universal principles and the replacement laws will not be different.

Besides, the technology-driven changes are irreversible and no one in his right mind will demand a reversal. Take telecommunications. The people of J&K will welcome the fact that they are connected to the rest of India and the world. Other examples are the Railways, aviation, power grid, tertiary healthcare, the immunisation programme and skill development, and the laws applicable to the implementation of these schemes and programmes.

What needs to be done now?
Following are the things that the government may consider:
- Withdraw the Armed Forces (Special Powers) Act from a number of areas immediately.
- Amend AFSPA in the current session of Parliament. A draft Bill is ready. Start work on repealing AFSPA and replacing it with a reasonable law that will give limited immunity to the Armed Forces.
- Send an all-parties delegation to J&K to meet with all sections of the people and listen to their views. Keep the ‘majoritarians’ out of the delegation.
- Direct the Ministry of Defence to draw up a plan (within 15 days) to withdraw as many troops as possible from civilian areas and redeploy the troops closer to the border. Direct them to draw up another plan (within 30 days) for gradually thinning the presence of the Army in the interior (inhabited) areas of J&K.
- Hand over primary responsibility for maintaining law and order to the state government and the J&K police.
- Revisit the Standard Operating Procedures for deployment of the security forces, correct the deviations and plug all loopholes.

Background:
The State of Jammu & Kashmir acceded to India in 1947 under a ‘grand bargain’. The fundamental premise of the Instrument of Accession dated October 26, 1947, was that J&K will accede to the Dominion of India (and later the Union of India under a new Constitution) on the basis of a special dispensation regarding distribution of powers between the Union and the State of J&K. Article 370 of the Constitution, adopted in 1950, embodied that grand bargain.
Conclusion:

There is a long road ahead and journey must begin as early as possible. As long as J&K remains an integral part of the Union of India, there is ample political and legal space to try out new ideas that will reassure the people of J&K that the Government of India will honour the grand bargain of the accession.

Insights into Editorial: The state of the Indian federation

25 July 2016

The Indian nation is said to be a federation with a unitary bias. This explains the relationship between the centre and the states in India.

Constitutional provisions on centre-state relations:
Part XI of the Indian Constitution (Articles 245 through 263) deals with centre-state relations. It covers legislative and administrative relations between states. The financial relationship between the centre and states is covered in Part XII of the Indian Constitution, including Article 280 that deals with the mandate for setting up a periodic Finance Commission.

Why Indian Constitution is said to be federal in form, but unitary in spirit?

The phrase “unitary bias” arises because residuary powers—the power to legislate on matters not enumerated in the central, state or concurrent list of subjects—is given to the centre under Article 248. This is unlike the constitutions in many other federations such as the United States, Germany and Australia where such power is conferred on the states.

The Centre was made more powerful as is revealed from the following facts:

Single Citizenship: The Indian federation is a dual polity with a single citizenship for the whole of India. There is no State citizenship. Every Indian has the same rights of citizenship, no matter in which State he resides.

A Strong Centre: The result of the distribution of powers between the federation and the units is that the State Governments are governments of limited and enumerated powers. Though the Union Government is also a government of limited and enumerated powers, it has, under certain circumstances, power even over the State Governments and the residuary power over the whole territory.

Single Constitution for Union and States: Indian Constitution embodies not only the Constitution of the Union but also those of the States. Furthermore, the States of the Indian Union have a uniform Constitution. The amending process both for the Constitution of the Union and the States is also the same.

Centre Can Change Name and Boundaries of States: In India, the Centre has a right to change the boundaries of the States and to carve out one State out of the other.

Single Unified Judiciary: In India, the Supreme Court and the High Court’s form a single integrated judicial system. They have jurisdiction over cases arising under the same laws, constitutional, civil and criminal. The civil and the criminal laws are codified and are applicable to the entire country. To ensure their uniformity, they are placed in the Concurrent List.

Unitary in Emergencies: The Indian Constitution is designed to work as a federal government in normal times, but as a unitary government in times of emergency. Under the Constitution, the
President of the Republic has been given emergency powers. An emergency can arise both in the political and financial fields.

**Common All-India Services:** The Constitution has certain special provisions to ensure the uniformity of the administrative system and to maintain minimum common administrative standards without impairing the federal principle. These include the creation of All-India Services, such as the Indian Administrative and Police Services and placing the members of these services in key administrative positions in the States.

**Inequality of Representation in the Council of States:** There is bicameralism in India but in the Council of States, States have not been given equal representation. Here population system has been followed and bigger States have been given greater representation than the smaller ones.

**Appointment of Governor by President:** The Heads of the State—the Governor—are appointed by the President. They hold office during his pleasure. This enables the Union Government to exercise control over the State administration.

**Appointment of the High Court Judges by the President:** Appointments to the High Courts are made by the President, and the Judges of the High Courts can be transferred by the President from one High Court to another.

**The Office of the Comptroller and Auditor-General:** The Comptroller and Auditor-General of India has an organisation managed by the officers of the Indian Audit and Account Services, a central service, who are concerned not only with the accounts and auditing of the Union Government but also those of the States.

**Centralized Electoral Machinery:** The Election Commission, a body appointed by the President, is in charge of conducting elections not only to Parliament and to other elective offices of the Union, but also to those of the State Legislature.

**Flexible Constitution:** The Indian Constitution is not very rigid. Many parts of the Constitution can be easily amended.

**Special Powers of Council of State over State List:** The Parliament is also authorised by the Constitution to make laws on any subject mentioned in the State List, if the Council of States passes a resolution by a two-thirds majority declaring a particular subject or subjects to be of national importance. Similarly, Parliament can pass laws on the items of State List, if it is deemed essential by the Government of India to honour an international obligation. In short, in India the Centre can encroach on the field reserved for the States as and when it feels necessary.

**Control over State Laws:** Certain laws passed by the State Legislature cannot come into operation unless they have been reserved for the approval of the President of India. Thus, all the laws concerning the acquisition of property, all laws on Concurrent List which are contrary to the laws passed by the Parliament; and the laws concerning the sales-tax on essential commodities, etc. need the approval of the Central Government. Moreover, the Governor of a State reserves the right to reserve any Bill passed by the State Legislature for the consideration of the President. The President may accord his approval to such a bill or may withhold his assent.

**Financial Dependence of States:** In a federation, as far as possible, States should be financially self-sufficient so that these enjoy maximum autonomy. But in India, the States depend on the Centre for all development. They have much less sources of income but many more needs of expenditure. This financial dependency has very much hindered the growth of States on federal lines. Why Drafting Committee used “Unitary” in place of “Federation”? 
The Drafting Committee wanted to make it clear that though India was to be a federation, the federation was not the result of an agreement by the states to join a federation and that the federation not being the result of an agreement, no state has the right to secede from it. It also explains the fact that the Union is indestructible but not the States; their identity can be altered or even obliterated.

What has been done to improve the centre-states relations?

Despite bias, in the early years after independence, the central government took many steps to encourage a federal character to its functioning.

- A National Development Council was set up in 1952 and a National Integration Council was similarly set up in 1962.
- Annual conferences were held between the centre and state chief ministers on finance, labour, food and other functional areas.
- The first constitutional body—called the Inter-State Council (ISC)—was set up in 1990 following the initial recommendation of the First Administrative Reforms Commission (1969), which was endorsed by the Sarkaria Commission on centre-state relations (1988).
- During the intervening years, there was a gradual centralization that diminished the political, legislative and administrative power of the states.

What else needs to be done?

For now, the interstate council should be further strengthened to become the critical forum for not merely administrative but also political and legislative give and take between the centre and states.

- It should function in such a manner that it reflects the equal status of states and the centre. It should meet once a year.
- Even though the ISC’s mandate is very broad, its aspiration has generally been limited to discussing affirmative action, welfare subjects and administrative efficiency and coordination.

Conclusion:

While India needs as many forums as it can get to improve implementation efficiency, the ISC should not be one of them. Along with another constitutionally sanctioned entity—the Finance Commission (FC)—the ISC should be the body that puts the “federation” back in the definition of the Indian nation. Together, the FC and the ISC should operationalize again Part XI and XII of the Constitution that ensure appropriate financial devolution and political decentralization. India’s true potential will be achieved only when both the centre and the states are strong.

**Insights into Editorial: SEBI – Needs reforms**

**26 July 2016**

1991 was a great year for SEBI. It was in this year that the government announced the decision to give statutory powers to the Securities and Exchange Board of India to regulate India’s capital markets. Sebi, which was established in 1988, got statutory backing in 1992 through the SEBI Act, 1992. This reform has undoubtedly done the country a world of good. But in the 25th year of its existence as a statutory body, it is still far from being a mature regulator. In fact, recent evidence points to the contrary.
**All you need to know about SEBI:**

It is composed of-

- The chairman who is nominated by Union Government of India.
- Two members, i.e., Officers from Union Finance Ministry.
- One member from the Reserve Bank of India.
- The remaining five members are nominated by Union Government of India. Out of them at least three shall be whole-time members.

**Important functions performed by SEBI:**

- Approve by−laws of stock exchanges.
- Require the stock exchange to amend their by−laws.
- Inspect the books of accounts and call for periodical returns from recognized stock exchanges.
- Inspect the books of accounts of financial intermediaries.
- Compel certain companies to list their shares in one or more stock exchanges.
- Register brokers.

**Following few incidents make reform necessary:**

- Recently, the Securities Appellate Tribunal (SAT) reprimanded one of Sebi’s whole-time members for dealing with its directions in a “shoddy manner”. SAT found that Sebi tried to pass off a letter by a Sebi officer as an order issued by a whole-time member. Also, in what was perhaps a first, Sebi was asked to pay the appellant Rs.1 lakh for making it “run around”.
- Earlier in the year, Sebi attracted SAT’s ire for the lack of consistency in its orders with respect to penalties for similar offences.
- In another instance, it was told off for supporting contradictory orders by its adjudicating officers. Such a conduct on part of Sebi is disgraceful to say the least.

**Current problems:**

It’s liberal use of interim orders, without hearing the affected party, is always criticized. It turns out that in many such cases, the regulator takes its time to issue the final order. For the market intermediary that is being investigated, there are clear timelines for responding to Sebi’s queries and being present for hearings. But there are no timelines prescribed whatsoever for Sebi. In the interim, affected parties are left to deal with the consequences of the strictures in the interim order. Also, the strictures are often harsh, involving debarment from securities markets and, at times, freezing of bank accounts.

**What needs to be done?**

- The government should revisit the unbridled powers it has given the regulator, and create some checks and balances. For instance, if an investigation is taking longer than three months, the regulator must be required to obtain court approval for continued attachment of properties.
- The executive should provide guidelines on how long Sebi can take with its investigations, before passing its orders. The lack of accountability on this front and the fact that there is no concept of performance appraisal for Sebi members, have led to the many problems.
- Sebi is need of a performance audit by a peer. For instance, every three years, independent organisations perform a peer review of the US Government Accountability Office (GAO), to determine whether it is suitably designed and operating effectively.
- The Office of the Auditor General of Canada and the Office of the Auditor General of Norway have been involved in these audits in the past decade. Likewise, a suitable overseas organisation can help with a thorough review of Sebi’s practices.
- Finally, as recommended by the Financial Sector Legislative Reforms Commission (FSLRC), Sebi must publish a performance report, which incorporates global best practice systems of measuring the efficiency of the regulatory system.
Besides, as recommended by the FSLRC, a review committee, comprising the non-executive members of the regulator's board, should be formed. This committee is to provide oversight of compliance of the regulator with governing laws and ensure greater transparency in the functioning of the board of the regulator.

**Conclusion:**

Sebi can embrace the above said reforms without waiting for the Indian Financial Code to be passed. It will go a long way in changing the perception of Sebi, which is getting eroded with every scathing SAT order. It is high time steps are taken to bring checks and balances on the regulator.