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Public Policy Post

ON RECENT LEGISLATIONS
& PUBLIC POLICY UPDATES

SEPTEMBER, 2024

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Bulldozer Justice

Background

The term Bulldozer Justice, is a form of extrajudicial punishment meted out to those accused of crimes, even before they are subjected to a trial. This has become a modus operandi followed by the state to evict an individual accused of a crime and demolish their homes. The demolition follows a disconnected incident or criminal charges involving the resident or property owner. The government issues notices of encroachment with respect to the accused's property, justifying the deployment of bulldozers. This form of punishment disproportionately affects people from marginalized groups. As per reports, since 2022, more than 1,50,000 homes across the country have been razed through bulldozer action, leaving 7,38,000 people homeless. The demolition is usually carried out before the accused even has an opportunity to challenge the allegations.

On September 2, 2024, the Supreme Court (**"SC"**), exercising its jurisdiction under Article 142 of the Constitution of India, issued an interim order stating that no demolitions should take place in the country without its permission. Article 142 empowers the Supreme Court

to pass any decree or order necessary for doing complete justice in any case or matter pending before it. This power is exercised only in extraordinary circumstances to address specific situations calling for fair and just resolution of the dispute.

The present case

On April 16th, 2022, a Shoba Yatra to celebrate Hanuman Jayanti was organised in Jahangirpuri which led to riots breaking out between two communities. Over twenty people were arrested in connection with the violence, with five booked under the National Security Act, 1980. In the aftermath of the violence, the Chief of Delhi's Bharatiya Janata Party ("**BJP**") wing wrote to the North Delhi Municipal Corporation ("**NDMC**"), attracting attention towards the illegally constructed homes and establishments of the rioters. The next day, the NDMC launched a drive to raze the alleged encroachments, demolishing several structures in Jahangirpuri.

The first batch of petitions was filed before the Supreme Court on 18th April, 2022, relating to the demolition drive. In this plea, one of the petitioners, Jamiat-Ulama-I-Hind argued that several homes of people were illegally

demolished on the pretext that they instigated riots in 2022. The drive was ultimately stayed but the petitioners prayed for a declaration that the authorities could not resort to demolition as a punitive measure.

The matter was further heard in 2023, when Senior Advocate Dushyant Dave raised concerns about the rising trend of state governments demolishing the homes of people accused of crimes, stressing that the right to shelter was a fundamental facet of Article 21 of the Constitution, which guarantees the fundamental right to life and personal liberty. The SC stated that the order would not be applicable to the encroachments on roads, footpaths, railway lines, water bodies and to those cases where demolition was ordered by a court of law. Further, the SC, exercising its *judicial oversight*, reiterated its stand that mere accusations or even convictions for heinous crimes cannot be grounds for demolition of property. The Solicitor General of India, Tushar Mehta, expressed objections to the said order stating that the hands of the statutory bodies cannot be restricted in this manner. However, the bench comprising Justices BR Gavai and KV Viswanathan refused to relent stating that the interim order, directed for two weeks, will not affect the

working of the statutory authorities.

Conclusion

The Bharatiya Nyaya Sanhita, 2024, prescribes different forms of punishments for criminal offenses. However, it nowhere confers on the state the power to demolish the homes of people accused of crimes. Further there is no statutory provision that legalizes or mandates the demolition of an offender's home as a punishment for any crime. This position is further fortified by various judgments of the High Courts and the Supreme Court. In the case of *Sudama Singh & others v. Government of Delhi (2010)* for instance, the Delhi High Court ruled that it was the duty of the state to survey all those facing evictions and make a rehabilitation plan in consultation with the ‘persons at risk’ before any eviction. It further stated that the government could only clear land if it served a *public purpose*. In the case of *Chameli v. State of Uttar Pradesh*, the Supreme Court similarly held that the right to shelter is a fundamental right under *Article 21* of the constitution.

It is thus, unfortunate to see state governments using

demolition as a punitive measure violating the due process of law and established human rights in the process. These measures also run counter to the idea behind governmental policies and schemes that place an obligation on the state to provide housing for all. The rightful intervention of the SC exercising its judicial oversight to curb such illegal demolitions, therefore, is a step in the right direction towards putting a check on the arbitrary use of state power.

Aparajita Women and Child (West Bengal Criminal Laws Amendment) Bill, 2024

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On September 3, 2024, the West Bengal Legislative Assembly passed the 'Aparajita Women and Child (West Bengal Criminal Laws Amendment) Bill, 2024 ("**Bill**"). The Bill proposes changes in the relevant sections such as Section 4, and Section 64 (that deal with punishments and Punishments for Rape respectively) of the Bharatiya Nyaya Sanhita, 2023 ("**BNS**"), inserts Chapter III A and III B (for the establishment of special courts and constitution of Task Force) in the Bharatiya Nagarik Suraksha Sanhita, 2023 ("**BNSS**"), and also alters some of the provisions of the Prevention of Children from Sexual Offences Act, 2012 ("**POCSO Act**").

The decision comes in the aftermath of the brutal rape and murder of a 31-year-old female doctor at the R.G. Kar Hospital in Kolkata on 9th August 2024.

The primary objectives of the Bill are first, the creation of a safer environment for the women and children of West Bengal, and second, ensuring adequate punishments for the perpetrators of such crimes.

The Bill amends Section 64 (1) (rape), Section 64 (2) (aggravated forms of rape such as custodial rape) and Section 70 (gang rape) of the BNS, and Section 4 (penetrative sexual assault) and Section 6 (aggravated penetrative sexual assault) of the POCSO Act.

The bill primarily makes an effort to increase the punishment for all kinds of sexual offenses. For example, it has provisions for rigorous imprisonment for life for a term of not less than 20 years, extendable to life imprisonment or death for the offense of rape resulting in a persistent vegetative state of a victim or death. Repeat offenders can also be given life imprisonment or death sentences.

The Bill has provisions for quicker investigation, ideally within three weeks, which is a departure from the current two-month period. An extension of 15 days can also be granted for certain cases.

The Bill seeks to establish a special 'Aparajita Task Force' at the district level to handle serious cases, with the necessary resources and expertise to help the victims and their families deal with the situation.

Special courts are to be set up for speedy proceedings in rape cases and publication of any detail without permission could be charged with imprisonment of up to five years along with fines.

The Bill also stipulates that fines imposed under its provisions must include compensation for the victim or next of their kin, and this would be determined by the special court. This provision is a step beyond the POSCO Act's mandate which focuses on covering the medical expenses and rehabilitation of the victim.

The Bill has received a largely positive response, and similar precedents have been set by other states such as Andhra Pradesh (Disha Bill) and Maharashtra (Shakti Bill). However, it is pertinent to note that the Bill has also received criticism from the legal community due to its non-compliance with judicial precedents and statutory norms in India. In Mithu v. State of Punjab, the Supreme Court struck down Section 303 of the Indian Penal Code (a death sentence for a person who committed murder while undergoing life imprisonment). However, the Bill mentions death as the only punishment for causing

death or permanent vegetative state of the victim of rape.

Moreover, it has been claimed through statistical analysis, conducted by Preeti Pratishruti Das, that harsher punishments lead to even fewer convictions. Similarly, Mr. Ashok Kumar Ganguly, a former Supreme Court Judge, pointed out that many provisions such as reducing the time for investigation of the case to a mere 21 days, are not possible given the present infrastructure and manpower. This reference was made to the amendments made to Section 193 of BNSS where the government provides no additional resources or funds for the setup and functioning of the special trial courts but still expects speedy trials of cases within 21 days. This strict timeline may also lead to miscarriages of justice.

While the Bill has been passed by the Legislative Assembly and was sent to the Governor of West Bengal CV Ananda Bose for his assent, the Governor has reserved the Bill for consideration of the President.

The Bill gives off the impression that the government

might need to re-evaluate its understanding of the present condition of the efficacy of laws. This Bill, in a way, adds to one of the grave problems of Indian legal system - The presence of laws only in letter without effective implementation or much change in reality.

One Nation, One Election Approved by Cabinet

On September 18, 2024, the Union Cabinet approved recommendations from a High-Level Committee to implement the 'One Nation, One Election' initiative, which seeks to synchronise elections for the Lok Sabha, State Assemblies, and local bodies. The Committee, chaired by former President Ram Nath Kovind, submitted its report earlier in March. The government is likely to bring three bills to put in place its plan to hold simultaneous elections, two to amend the Constitution, and one that will amend provisions in three existing laws concerning Union Territories.

The Committee's Recommendations

The Committee recommends conducting Lok Sabha and Assembly elections simultaneously, reducing election fatigue and allowing voters to elect both national and state representatives in a single go. Local body elections would follow within 100 days. While this approach could ease transitions, the tight timeframe may pose logistical challenges.

A key proposal is the creation of a common electoral roll for all elections, aiming to reduce duplication and errors,

thus simplifying the voting process for citizens.

Additionally, the Committee has recommended engaging in broad public consultations to gather feedback on these changes. This is necessary as such a monumental shift in the electoral process needs input from all corners of society ensuring inclusion and transparency.

In cases where elections cannot be held in a specific Legislative Assembly, the Election Commission may recommend a postponement to the President under Article 82A(4). In cases like a hung house or a no-confidence motion, elections would only be held for the remainder of the original term. Hence, ensuring that states facing emergencies or political instability are not left without proper representation, while maintaining the overall synchronisation of election cycles.

Finally, the Committee suggests forming an "Implementation Group" to oversee the transition to simultaneous elections, but concerns remain about how these plans will handle unforeseen political challenges. By creating a dedicated body to monitor progress, the government is taking steps to ensure the shift to simultaneous elections happens smoothly.

Proposed Amendments

The Committee has proposed amendments to three Articles, insertion of 12 new sub-clauses in the existing Articles and tweaking three laws related to Union Territories with legislative assemblies. If the government decides to carry out the Kovind Committee proposal from 2029, as many as 17 states will have tenure of assemblies for less than three years.

One of the Constitutional Amendment Bills affects federalism. Those provisions of the Constitution which are related to the federal structure of the polity can be amended by a special majority of the Parliament and also with the consent of half of the state legislatures by a simple majority. However, the BJP-led NDA may not have the required numbers.

The first Constitutional Amendment Bill will address the simultaneous holding of Lok Sabha and state legislative assembly elections. The Bill proposes amendments to Article 82A, including the addition of sub-clause (1) relating to the "appointed date" and sub-clause (2), which focuses on ending the terms of both the Lok Sabha and the State assemblies simultaneously.

Currently, Article 83(2) stipulates that the term of the Lok Sabha is five years from the first sitting, unless dissolved earlier. The proposed amendment adds sub-clauses (3) and (4), which would specify under what circumstances the Lok Sabha can be dissolved mid-term and how the remainder of its term is to be handled. Additionally, provisions will be added for the dissolution of legislative assemblies and amending Article 327 to introduce the term "simultaneous elections," ensuring that the concept of holding elections at the same time for the Lok Sabha and state assemblies is legally binding. Crucially, this particular bill will not require ratification by 50 per cent of the states.

The second Constitutional Amendment Bill, on the other hand, will require such approval because it deals with state issues. For local bodies, the second constitutional amendment bill will address electoral rolls and voting processes for both national and local elections. Currently, the Election Commission of India handles national and state elections, while State Election Commissions (SECs) handle local elections. The introduction of Article 324A envisions a system where the Election Commission works in conjunction with SECs to streamline and centralise the process, facilitating simultaneous elections for local bodies along with the Lok Sabha and state assemblies.

In addition to constitutional amendments, the Government intends to bring a third Bill that will amend provisions in three existing laws governing Union Territories with legislative assemblies: Puducherry, Delhi, and Jammu and Kashmir. The Modifications seek to ensure that the terms of these assemblies align with those of other state legislative assemblies and the Lok Sabha, as described in the first constitutional amendment bill.

The statutes to be altered are the Government of National Capital Territory of Delhi Act of 1991, the Government of Union Territories Act of 1963, and the Jammu and Kashmir Reorganisation Act of 2019. This proposed measure will be regular legislation that does not require constitutional amendments or state confirmation.

Issues in consideration

The cost of holding elections is a key factor in this proposal. While simultaneous elections are expected to be cheaper than multiple staggered elections, critics argue that the savings may be minimal. Reports estimate that around ₹60,000 crore was spent during the 2019 Lok Sabha elections and ₹1,35,000 crores for 2024 elections.

However, Congressmen Dr. Shashi Tharoor and Mr. Praveen Chakravarty suggest that the savings might be less than ₹5,000 crore annually.

The second factor as discussed by Defence Minister Rajnath Singh is that the frequent election cycles keep the administrative machinery constantly occupied. Frequent election cycles often disrupt government functioning, with development programs paused due to the model code of conduct. Simultaneous elections would limit these disruptions, allowing politicians to focus more on governance. Lastly, constant elections create an atmosphere of political rhetoric, where parties prioritise short-term electoral gains over long-term development, potentially delaying welfare programs for vulnerable groups like farmers, unemployed youth and marginalised communities.

Democratic Concerns and Historical Context

While the idea of simultaneous elections is appealing, it raises significant democratic concerns. Critics warn that national parties, particularly the ruling party, could gain advantages through the "touching effect," where strong

performance in one election influences others, potentially undermining a level playing field for all parties. At the regional level, smaller parties may struggle against larger national parties, jeopardising the federal nature of India's democracy. These issues must be addressed before implementing "One Nation, One Election."

Historically, simultaneous elections were conducted until 1967, disrupted by the frequent imposition of Article 356, which led to state assembly dissolutions. Thus, political analysts argue that it was not the idea of simultaneous elections that violated federalism, but the misuse of Article 356 by the Union government which compromised functional federalism.

Conclusion

The "One Nation, One Election" initiative presents a potentially transformative approach to election management in India, aiming to bring efficiency and reduce electoral costs. However, while these practical advantages are compelling, the challenges of maintaining democratic fairness, ensuring regional representation, and respecting India's federal structure cannot be

ignored. As the proposal moves forward, it will be crucial to engage in thorough deliberations, bringing together diverse stakeholders to strike a balance between electoral reform and democratic integrity, just like the Government has proposed to do.

10 years of Make in India: A Review

India's market has been known to be ridden with regulations and high government intervention. After the 1991 liberalisation initiative undertaken by the Union Government at the time, India's market opened up to Foreign Direct Investment ("**FDI**"), reducing barriers to entry. After the Global Financial Crisis in 2008, the National Manufacturing Policy of 2011 was introduced to enhance the role of the government in accelerating employment creation and sustainable growth. The Policy has many similarities with the objectives of the "**Make in India**" campaign, which was introduced three years later.

The Union Government on September 25th, 2014 launched the Make in India campaign with the primary objective of turning India into a global hub for manufacturing. There were certain goals under the initiative, that included facilitating investment, boosting exports, increasing employment in the manufacturing sector, for India to become an integral part in the global supply chain. Efforts were made to simplify the regulatory framework and improve the Ease of Doing Business. A decade has since passed, and the time has come to analyse the results of the Government's ambitious policy for India's growth.

There has been both success and failures with respect to the goals set by the government under this initiative.

On one hand, there have been record-breaking FDI inflows from around USD 45 million in 2014 to USD 70.95 million presently. India's rank in the Ease of Doing Business Index jumped 79 ranks in 5 years, from 142nd in 2014 to 63rd in 2019. These can be attributed to the government's commitment to simplifying regulations to create a more business-welcoming environment.

Exports of goods and services in 2014 stood at an estimated USD 468.35 billion, subsequently rising to an USD 777.14 billion in March 2023. But, it constitutes 21.9% of India's Gross Domestic Product ("**GDP**"), which is lower than in the year 2014, where it stood at 23%. Import reliance was reduced initially, but the share of imports in India's GDP has almost reached the 2014 levels, standing at 25%.

The share of the manufacturing sector in the GDP remains stagnant since 2014, at 17.3%. As we come closer to 2025, the goal of reaching 25% still remains a dream.

Further, the share of the sector in employment has declined to 11.4% in the year 2022-23.

To realise the ambitious target of reaching USD 1 trillion exports, the World Bank applauds India's efforts to reduce its trade costs, while also suggesting that India can reduce it further. It also suggests relaxing the restrictions on services trade, and making trade policies more predictable to increase competitiveness. India remained the fastest growing economy at 8.2% y/y basis, but the manufacturing sector's contribution remains unchanged, with declining shares in the GDP. Hence, it has not resulted in generating more employment than other sectors, as the government had envisioned for it.

Critics say that the Make in India initiative had two major shortcomings: *Firstly*, excessive reliance on foreign investment which left domestic production vulnerable; and secondly, an overlooked implementation deficit rather than budgetary or fiscal deficits. This resulted in a significant number of stalled or incomplete projects, highlighting the lack of preparedness to execute a certain policy. *Secondly*, a pattern of de-industrialisation, characterised by plummeting growth in industrial

production and a collapse of fixed investment growth has been seen. In order to remedy this, it is recommended to revamp industrial policy with a focus on building long-term, dynamic advantages in industries by encouraging investment-led growth and catching up with new technology. This would enable Indian industries to compete at the global level. India can adapt to imported technologies through domestic R&D, thereby indigenising the innovation landscape. These measures would better position India in the global manufacturing hub, enabling it to confidently compete on a level playing field.

Bombay High Court strikes down IT Amendment Rules 2023

Recently, the Bombay High Court struck down the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023 ("**impugned rules**") as unconstitutional. The decision came after a split verdict from a division bench, leading to Justice Chandurkar being appointed as the third referral judge to provide the decisive ruling. The impugned rules were scrapped on the grounds of arbitrary and overbroad powers of content moderation entrusted to the Central government.

Facts

In April 2023, the Ministry of Information and Broadcasting issued the impugned rules that introduced two major changes, i.e., a regulatory framework for governing online gaming and modified content moderation guidelines for social media intermediaries ('SMI'). Pursuant to which a key provision envisaged the establishment of a fact-checking unit ("**FCU**") to identify online content regarding government business as fake, false, or misleading. This unit would either be the Press Information Bureau or any agency authorised by the Central Government.

Furthermore, the impugned rules stipulated that non-compliance with the said obligations would disentitle SMIs from claiming safe harbour immunity under Section 79 of the Information Technology Act (“**IT Act**”) 2000, which essentially shields them from the liability arising out of third-party content. Kunal Kamra, a stand-up comedian, alongside notable media guilds, challenged the rules on the grounds of violation of Articles 14 and 19 of the Constitution of India.

Arguments

The petitioners averred that ambiguous definitions as well as arbitrary regulation mechanisms will entrust the state with unbridled authority to remove content that it deems fit, resulting in a chilling effect on media houses, thus discouraging them from publishing content that even remotely addresses governmental actions. Additionally, the impugned rules were contended to contradict the mandate set in the case of *Shreya Singhal v. Union of India*, which stipulated that powers of content removal should be governed by a court, and not by the central government. The vague provisions enable the central government to bypass the courts and directly address the SMIs.

The Union of India, on the other hand contended that the FCU is consistent with law as it finds its genesis in the right to information enshrined under Article 19(1)(a), which further includes the right to accurate information. Furthermore, it was averred that the term government business used in the provision has been defined under the Government of India Transaction of Business Rules, 1961. Thus, the ambit of the term is restricted to misinformation related to official affairs of the state and would exclude subjective criticism.

Ratio

The Division Bench of the Bombay High Court, comprising J. Neela Gokhale and J. G.S Patel, had contrasting viewpoints. While the former upheld the validity of the amendments, the latter struck down the impugned rules as ultra vires and violative of principles of natural justice. The decisive verdict of J. Chandurkar reinforced the opinion of J. Patel which stated that the right to freedom of speech and expression does not encompass the right to the truth. Besides, he clarified that the state has no constitutional duty to prevent the citizens from receiving false information if the such information is not verified first.

The ruling rigorously evaluated Rule 3(1)(b)(v) of the impugned Rules, which was found to potentially impose limitations on Article 19(1)(a) rights that exceed the permissible restrictions under Article 19(2). Another major challenge arose from the unjustified differentiation made between the internet and the print medium. J. Chandurkar astutely observed the lack of rational basis for scrutinizing information about the Central Government in digital form while exempting print media from similar oversight. This discriminatory approach led to the conclusion that the impugned rules contravened Article 19(1)(g) and Article 14 of the Constitution.

In addition, there was also a reasonable apprehension of a conflict of interest because the rules legitimized the notion of the government acting as the judge in its own matters by allowing the FCU to decide what is fake, false, or misleading without any reference to actual governmental activities. The appellate court was particularly upset with the generality and overbroad character of the expressions, 'fake' and 'false'. He further held that the rules in question went beyond the limits of executive orders and extended to lawmaking by enacting substantive rules that are not sanctioned under the IT

Act, especially with regard to Sections 69A and 79. The constitutional validity of the regulations was also weakened by the inadequacy of apparent checks and balances against the probable misuse of the said rules.

Conclusion

The verdict reaffirmed the constitutional commitment of safeguarding freedom of expression and access to information in digital spaces. The broad scope of terms such as "fake, false, or misleading" and "business of the Central Government" vested the FCU with considerable discretion in determining what could be considered misinformation related to government business. The latter could potentially include any action taken by the Central Government. This unchecked government control over information could stifle public discourse, limit the accessibility of diverse viewpoints, and suppress the freedoms of speech and expression. Additionally, the ruling protected the intermediaries placed at risk of losing their safe harbor protections on grounds of non-compliance with the impugned rules.

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