No extra year

By approaching the court, the Sri Lankan President looked too keen to extend his term

The Sri Lankan Supreme Court's ruling that President Maithripala Sirisena's term will end when he completes five years in office comes as no surprise. What was surprising was how such a doubt had arisen in the first place. Mr. Sirisena, who was elected President in January 2015, had wanted the court to clarify whether he would have a six-year term as the law stood on election day or whether it would be five years in accordance with the 19th constitutional amendment adopted in April 2015. That the Sri Lankan President could suddenly harbour such a doubt is inexplicable given his frequent assertions that he was that rare head of state who had voluntarily agreed to a shortening of his tenure. It is the National Unity government that he heads along with Prime Minister Ranil Wickremesinghe that brought in the amendment containing provisions that considerably dilute the powers of the executive presidency. Second, the amendment has a clear, unambiguous transitional provision that the incumbent President and Prime Minister will continue to hold their respective offices "subject to the provisions of the Constitution as amended by this Act". There appears to be an unfortunate trend in Sri Lanka of presidents using constitutional provisions for political ends. Mr. Sirisena's predecessor, Mahinda Rajapaksa, had sought the court's opinion on whether there was any impediment to his contesting a third term. Another former president, Chandrika Kumaratunga, had a 'secret' swearing-in one year into her second term, but the court denied her bid for an extra year in office.

Even though Mr. Sirisena's supporters say he was exercising his right to approach the Supreme Court for a clarification based on a valid doubt, the rationale behind his reference could only have been political. He was obviously looking for a loophole that would give him another year in office. If he had an extra year, his term would go on till early 2021, and he would still be president at the time of the next parliamentary election, due in 2020. Mr. Sirisena possibly thought he needed more time to consolidate his position in the power-sharing arrangement between his Sri Lanka Freedom Party and Mr. Wickremesinghe's United National Party, as well as with respect to the joint opposition that backs Mr. Rajapaksa. The developments come at a time when there are signs of a strain in the coalition. The SLFP and UNP are set to contest next month's local government polls separately. The President recently unveiled the findings of an inquiry into a bond scam that has indicted a UNP minister as well as the Central Bank governor, an appointee of Mr. Wickremesinghe. Far from strengthening his position, Mr. Sirisena has ended up looking desperate to remain in office. He could have done without this setback to his image.

Left behind

The right to free and compulsory education must be extended to the 14-18 age group

If there is one strong message from the findings of the Annual Status of Education Report (Rural) 2017, it is that the Right of Children to Free and Compulsory Education Act should cover the entire spectrum of 18 years, and not confine itself to those aged 6 to 14. Guaranteed inclusion will empower those in the 14-18 age group who are not enrolled anywhere, and help them acquire finishing education that is so vital to their participation in the workforce. The ASER sample study estimates that 14% of this age group – a total of 125 million young Indians in this category – are not enrolled. It is absolutely essential for all of them to get an education that equips them with the skills, especially job-oriented vocational capabilities, if the expectation of a demographic dividend is to be meaningful. Unfortunately, the state of rural elementary education is far from encouraging. To begin with, only 5% of the respondents in the survey, which was aided by the NGO Pratham, reported doing any kind of vocational course, and even among this small minority a third were enrolled for three months or less. Moreover, learning outcomes for those who had progressed to higher levels of schooling were shockingly low: only 43% of the youth could solve an arithmetic problem involving division of a three-digit number by a single digit; among those who were no longer in school, the percentage was sharply lower.

The insights available from successive studies point to progress being made in raw enrolment of children in school, but miserable failures in achieving learning outcomes. Also, enrolment figures often do not mean high attendance. It is not surprising, therefore, that a significant section of secondary level students find it difficult to read standard texts meant for junior classes or locate their own State on the map. There are also discrete differences among States on the number of youth who are not on the rolls in appropriate levels of schooling, with 29.4% of both boys and girls aged 17-18 not enrolled in a Chhattisgarh district, compared to 4.5% and 3.9%, respectively, in a Kerala district. The ASER data point to a massive digital divide, with 61% of respondents stating they had never used the Internet, and 56% a computer, while mobile telephony was accessible to 73%. Here too, girls were worse off in terms of access to computers and the Internet. Scaling up access to these can be achieved by bringing all children under the umbrella of a school, college or training institution. All expenditure on good education is bound to have a multiplier effect on productivity. What is needed is a vision that will translate the objectives of the RTE Act into a comprehensive guarantee, expanding its scope to cover all levels of education. This will remove the lacuna in policy that awaits remedy seven decades after Independence.

Talking over a law

There should be a frank public conversation on the judiciary — an internal patch-up is not enough

ARGHYA SENGUPTA

GETTY IMAGES/ISTOCKPHOTO

As the consequences of the historic press conference of the four seniormost judges of the Supreme Court play out, a constant refrain that has been heard is of the need to resolve differences internally. This was always going to be the stock response of dominant sections of a legal and judicial fraternity that constantly speaks truth to government but is uncomfortable when the same standards are applied to them. Such a refrain, at first glance, is curious, as it appears to be an attempt to close the stable doors after the horse has bolted. But in reality it is the carefully calculated response of an entrenched mindset that seeks to maintain public confidence in the judiciary by keeping it insulated from public spotlight, discussion and criticism. It is this mindset that was challenged, in cause and effect, by the press conference.

Lack of transparency

The immediate trigger for the press conference was the apparent arbitrariness of the Chief Justice of India (CJI) in allocating benches for disposal of cases. Whether indeed there was arbitrariness, and whether such arbitrariness, if any, was purely whimsical or motivated, is impossible for members of the public to ascertain. But if the four seniormost judges, despite their internal meetings with the CJI, resorted to the extreme measure of appealing to the public, their grievances are entitled to a certain degree of credence. Assuming such credence, the question that any well-wisher of the judiciary, whether inside or outside it, must ask is this: What is the institutional design that facilitated such seemingly arbitrary decision-making?

One possible answer lies in the opaque internal structure of the judiciary founded on a combination of unquestioning trust in the office of the CJI along with an instinctive distaste for any interference by Parliament or government in judicial functioning. So sacrosanct are both these premises today that anything to the contrary appears blasphemous. However, their sanctity is neither natural nor long-held.

At the time of the formulation of the Constitution, B.R. Ambedkar warned that no matter how upright the CJI might be, like any other mortal he too would have frailties. Thus no absolute power should be vested in him. Admittedly, Ambedkar was speaking about not giving the CJI a veto power in appointing judges; but the same sentiment rings true in case of the convention of allocating benches as well. After all, England, from where the convention of the Chief Justice as the master of the roster emanates, has been witness to several Lord Chancellors constituting partisan benches on matters of great political moment. Consequently, the principle that one should trust one's Chief Justice, while admittedly a sound principle, cannot be an absolute one. That it has become so is testament to the legal fraternity closing ranks under the ruse of convention.

Fears of politicisation

The second premise justifying complete judicial insulation that makes arbitrary decision-making in the judiciary possible is the fear of politicisation. This is undoubtedly legitimate – a politicised judiciary might well suffer from a lack of public confidence. But the implementation of this principle is both over-broad and misdirected. In public discourse there is a false conflation of any parliamentary action relating to the judiciary as *ipso facto* affecting its independence. Whenever any move towards reforming the judiciary is made by politicians, commentators are quick to hark back to the Emergency and the supersession of three judges for the CJI that preceded it. But there is some distance, logically and factually, between superseding the CJI and proposing an accountability law for judges, revising the opaque process of appointment and looking to institute credible alternatives to a broken system of tribunals, as stillborn reform initiatives in the last decade have sought to do. Unfortunately, so deep is judicial memory of the Emergency that it has clouded in distrust many well-meaning attempts at judicial reform by governments and Parliament.

Equally critically, this fear of politicisation is misdirected, being based on a naïve view that overt parliamentary law is the sole method of interference with the judiciary. What it fails to countenance is that more nefarious methods of political interference in the judiciary exist, and have always done so; moreover, that such methods thrive in opacity, subjectivity and a lack of norms. As Bentham said, a view the Supreme Court itself has endorsed in *Mirajkar*, "in the darkness of secrecy, sinister interest and evil in every shape, have full swing." It is this darkness that the press conference of judges has shone a light on. To shut the light out and resolve the matter in darkness through an internal resolution would be exactly contrary to what the situation demands.

Need a 'Supreme Court Act'

While internal resolution might be a palliative to tell the world that all is well with the Indian judiciary, it will, at best, be a band-aid solution. Were such a solution genuinely possible, one can safely trust that the four judges would not have resorted to a press conference to make their views clear. The press conference should make it clear to all that the ship of internal resolution has sailed. Instead, what is needed now is a Supreme Court Act to be passed by Parliament after an open public discussion involving all stakeholders – civil society, the judiciary, the Bar and members of all shades of political opinion.

As a precursor to such reform, it is important to clarify that the Constitution envisages the powers and jurisdiction of the Supreme Court to be the possible subject matter of a parliamentary law. This is clear from Entry 77 of List I of the Seventh Schedule which makes the aforementioned a legitimate subject of law-making. Passage of such a law is critical to rectify the discourse of any parliamentary law relating to the judiciary being anathema.

The substance of a proposed Supreme Court Act must be the restructuring of the Supreme Court itself. It is vital that a court of 31 judges, if it is to function as an apex court, must develop some degree of institutional coherence. Such coherence is impossible when the court sits in benches of two judges each. Further this structure allows the CJI to become the master of the roster, vested with the absolute discretion of allocating judges to particular cases, leading to crises like the present one. An antidote to both the aforementioned problems is a restructuring of the Supreme Court into three divisions: Admission, Appellate and Constitutional. All special leave petitions under Article 136 ought to be first considered by the Admission division. The division will comprise five randomly selected judges who for one quarter every year will deal only with admission cases.

Like the Supreme Court of the United States, making this process work by circulation and without oral hearing needs to be strongly considered. The Constitution Division should be a permanent Constitution Bench of the five seniormost justices of the Court. They will hear all matters of constitutional importance and authoritatively pronounce the Court's views on it. The Appellate division should comprise the remaining 21 judges (on the basis of the sanctioned strength of 31) with seven three-judge benches. They will hear all matters admitted by the Admission Division and any other writs or appeals which lie as a matter of right to the Supreme Court.

Such restructuring will have three advantages. First, it will yield more coherent jurisprudence, particularly in constitutional matters, taking us closer to certainty and the rule of law. Second, it will allow for more careful contemplation of which matters actually deserve admission to India's apex court. Third, it will reduce the discretion available to the CJI to select benches, since this will be limited to the appellate division alone. Needless to say, norms for such bench fixation and other matters relating to jurisdiction and powers of the Court may also be a part of the proposed law.

A public conversation

At this point of time, the proposed law is critical to start a frank public conversation around what the judiciary needs to restore public confidence. Such a public conversation is necessary to underline that the judiciary is part of a republican constitutional framework, not the preserve of lawyers and judges alone. An internal resolution will be its antithesis, which might defuse the present crisis, but will exacerbate the deeper wound.

Arghya Sengupta is Research Director, Vidhi Centre for Legal Policy. The views expressed are personal

The price prescription

Post-GST, we need a more targeted taxation and retail policy on tobacco products

AMIT KAPOOR & BHAWNA KAKKAR

India is the second largest consumer and producer of tobacco-based products – categorised as sin goods or demerit goods – and it has become imperative for policymakers to devise measures to effectively curb their use. Over the years, governments have resorted to a mix of policies which range from monitoring the pricing and taxation regime of these products to the focus gradually shifting towards awareness campaigns highlighting the deadly effects of tobacco use, regulatory control laws pertaining to packaging and labelling as well as shaming and prohibiting its use in public places.

Health comes first

The Supreme Court recently stayed a Karnataka High Court order setting aside the 2014 amendment rules to the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 that prescribed tobacco packages having pictorial warnings covering 85% of the package space. This is in contrast to the High Court order that viewed the 2014 rules violating constitutional norms as being an "unreasonable restriction" on the right to do business and earn a livelihood. The High Court also held that there seemed to be no connection between the images and the warnings. The Supreme Court observed that the "health of a citizen has primacy". Though this is one approach to bring about behavioural changes towards tobacco use, placing barriers to its consumption also calls for appropriate pricing policies, for which taxation measures must be at the forefront.

A skewed pattern

For this, it is necessary to first understand the nature of its product variant structure. The World Health Organisation's Global Adult Tobacco Survey (GATS 2016-17) highlights India's distinct pattern of tobacco consumption in multiple forms such as cigarettes, bidis, chewing tobacco and khaini (smokeless tobacco) – in contrast to the global trend of cigarettes being the primary source of consumption. In India, bidis, chewing tobacco and khaini form 89% of consumption as against 11% for cigarettes.

GETTY IMAGES

What explains such a skewed pattern? If we look at the competitive dynamics and pricing, a key reason for such disparity is because it is based on the unit-level pricing of multiple forms of tobacco. The average unit price of a bidi or smokeless tobacco is significantly lower than of a cigarette. Therefore, the former is a cheaper source for consumers who are mostly from the low-income segment of society.

After GST

The nationwide implementation of the goods and services tax (GST) has not improved the situation either. All tobacco-related products have been placed in the 28% tax slab. Additionally, a National Calamity Contingent Duty (NCCD) and a cess charge have been imposed on cigarettes and smokeless tobacco. The pre- and post-GST impact on prices of tobacco-related products is useful in the context of pricing multiple forms of tobacco products in India. Except for a price drop in the smallest pack size of bidi, there has only been a marginal rise in the price of bidi for other pack sizes after the roll-out of the GST. Further, the price of an average bidi pack has been increased by 20 paise.

In comparison, the price rise post-GST is much higher for cigarettes. The average increase in pack price has been the highest for the economy pack followed by the premium and mid-priced packs. If we consider other tobacco-related variants such as smokeless tobacco and pan masala, their pricing trends move in the opposite direction with respect to pack sizes. In the case of smokeless tobacco, the maximum price increase has been in the smallest pouch size category (less than 2 grams) whereas an increase of only 10-20 paise per pack has been observed across other pouch sizes. Pan masala, on the other hand, has shown a decline in post-GST prices for smaller pouch sizes and a rise for larger pouch sizes.

Therefore, one may be able to postulate that the GST roll-out has not had much of an impact either on the pricing of various tobacco products or in reduction of the vast disparity between its different variants. The impact has been negligible in the case of bidis.

The revisions in the taxation policy concerning tobacco products should ideally have a mix: of a removal of all excise and other tax exemptions irrespective of the size of the unit, restrictions on sales of loose sticks and raising taxes/duties on bidis and smokeless tobacco by a significantly higher level to narrow the gap between the price of bidis and smokeless tobacco *vis-à-vis* cigarettes keeping in mind the increased probability of health-related issues among low-income poor households and the health-care burden.

Amit Kapoor is chair, Institute for Competitiveness, India. Bhawna Kakkar is a researcher with the institute

LETTERS TO THE EDITOR

Letters emailed to letters@thehindu.co.in must carry the full postal address and the full name or the name with initials.

Haj subsidy

The government's move to phase out subsidies for the annual Haj pilgrimage is a step in the right direction. However, it is unfair on the part of the government to dub it as the end of 'minority appeasement'. The government has been merely complying with the Supreme Court order of 2012, which had directed that the subsidy on air travel be phased out within 10 years. Given this development, the government should also 'phase out' funds for pilgrimage to religious sites patronised by the majority community. An example in the past was the Union Culture Ministry allocating about ₹100 crore to Madhya Pradesh for the Mahakumbh. The Centre has to walk the talk when it comes to empowering the minorities and not indulge in a politics of doublespeak. The best way out is to implement the recommendations made by Justice Rajinder Sachar and Justice Ranganath Mishra.

MOHAMMED TAHSIN,
Bengaluru

■ There needs to be a distinction made between subsidising religious tours with public funds and facilitating the same without financial applications. The next step that governments both at the Centre and in the States need to take is to stop interfering in the religious affairs of all communities, an example being the administration of temples.

K.R. JAYAPRAKASH RAO,
Mysuru

All gore

The tall talk about 'jallikattu' being an intrinsic and integral part of Tamil culture and its hoary tradition pales into insignificance when the body count begins ("3 spectators gored to death", January 17). It is a gruesome sport and what is even more horrifying is that spectators too have to suffer the consequences as the bulls charge into the ramshackle stands set up by those organising the event. Has anyone thought about the families of the young men who were gored? These events are a free-for-all with no regulations or even a reasonable standard of safety. Those trying to tame angry bulls should realise that their life is on the line.

C.V. ARAVIND,
Bengaluru

Learning deficit

The report, "36% rural youth can't name India's capital, finds survey" (January 17), as reported by Pratham in its report 2017 Annual Status of Education Report (ASER) is a sad reflection on our current education system. Reading has become an aversion for the younger generation. There is hardly any difference between urban and rural students in this matter, the only difference being that urban children are smart enough to use electronic gadgets. Experts in the field of education and policymakers must join hands and rationalise our education system to mould and prepare our younger generation for the job market once they complete their education. In the absence of such a policy change, our educational institutions will only continue to churn out students who will not fit in anywhere.

M.R.G. MURTHY,
Mysuru

■ The findings are quite disturbing. Though the percentage looks small, it translates into a large number of young people. Clearly, there is something fundamentally wrong with the way in which education is being imparted. India is home to one of the largest populations of youth and given such dismissal outcomes, how are we going to reap the benefits of our demographic dividend? Imparting quality education and skill development is a must, failing which our huge youth population will turn out to be a liability.

PADMAKAR GAIKWAD,
Pune

'Lit for Life'

The three-day 'Lit for Life' literary festival organised by *The Hindu*, in Chennai, was "supercalifragilisticexpialidocious"; the word exists in the Oxford English Dictionary and means "Extraordinarily good; wonderful". One has to compliment Team *Hindu* for organising an enlightening programme this year too. The purpose of any festival is to unite people and this one was to lead us from the darkness of ignorance to the light of knowledge. It accomplished this on all counts.

T.S. KARTHIK,
Chennai

MORE LETTERS ONLINE:
www.hindu.com/opinion/letters/