Under scrutiny

The proposal to bring the BCCI under the RTI reflects rising public expectation

There is little surprise in the Law Commission of India recommendation that the Board of Control for Cricket in India be brought under the purview of the Right to Information Act. Over the years, the popular expectation that India's cash-rich and commercially successful apex cricket body will have to make itself more transparent and accountable has been rising. While the BCCI is a private body that needs no financial help from the government, it is being increasingly recognised that it performs significant public functions. Even though a five-judge Bench of the Supreme Court in 2005 held by a 3-2 majority that the BCCI could not be termed an instrumentality of the 'State' under Article 12 of the Constitution, subsequent developments have ensured that the public character of its functioning is widely recognised. In recent years, especially against the backdrop of the betting scandal that hit the Indian Premier League tournament a few years ago, the view that the cricket board is functioning in an opaque manner and not entirely in the game's interest has gained ground. The Supreme Court's intervention led to the constitution of the Justice R.M. Lodha Committee, which recommended sweeping reforms in the board's structure and the rules governing its administration. Many believe that implementing these reforms at both national and State levels would impart greater transparency in its functioning and lead to an overhaul of cricket administration in the country. The apex court also reaffirmed the public character of the BCCI's functions.

The Lodha Committee recommended that the board be treated as a public authority under the RTI Act, and the Supreme Court wanted the Law Commission to examine this suggestion. The Central Information Commission favoured the idea. The Union government has on different occasions maintained that the BCCI is a 'national sports federation' and, therefore, an entity that falls under the RTI Act's ambit. However, the BCCI is not one of the national federations listed on the website of the Ministry of Youth Affairs and Sports. Summing up its reasoning, the Law Commission has taken into account "the monopolistic nature of the power exercised by BCCI, the de facto recognition afforded by the Government, the impact of the Board's actions/decisions on the fundamental rights of the players, umpires and the citizenry in general" to argue that the BCCI's functions are public in nature. The board gets no financial help directly, but the commission has argued that the tax and duty exemptions and land concessions it got would amount to indirect financing by the state. A relevant question may be whether its autonomy would suffer as a result of being brought under the RTI. It is unlikely: other national federations are under the RTI and there is no reason to believe it would be any different for the BCCI. In fact, as a complement to the structural revamp, it may redound to the game's interest.

Defensive shuffle

On Kathua, the BJP is presenting one narrative to Jammu, another to the rest of India

In its reaction to the rape and murder of an eight-year-old girl in Kathua, the BJP seems motivated by a need to strike a balance between protecting its political constituency in Jammu and addressing the public outrage countrywide. Two of its Ministers in the Mehbooba Mufti government – Lal Singh and Chander Prakash Ganga – had participated in a rally organised by the Hindu Ekta Manch in support of the accused in the case, but the BJP was slow to act against them. Under pressure from Ms. Mufti, they were asked to submit their resignations, but the BJP made it seem to be part of a larger exercise of a shuffle in the Cabinet. Even when their continuance in the Cabinet became untenable, the BJP was intent on protecting the two from any shadow of guilt. Soon after the two Ministers handed in their resignations, the party asked all its nine Ministers to step down, apparently to bring in new faces. Clearly, the BJP is hoping to present one narrative to the Jammu region, and quite another to Kashmir and the rest of India. While promising justice to the rape victims, Prime Minister Narendra Modi had nothing to say about his own party's attempts to obstruct the course of justice in Kathua. The resignations ensured the continuance of the government, but the episode has cast harsh, unflattering light on the utter incongruity of the alliance.

Neither the Peoples Democratic Party nor the BJP wants to end their coalition over this issue; however, the two parties serve very different political constituencies, both demographically and geographically. What brought them together was not some shared political objectives, but the PDP's interest in keeping the National Conference out, and the BJP's in keeping the Congress out. The alliance was born of short-term electoral expediency rather than any long-term political strategy. After the death of Mufti Mohammed Sayeed in January 2016, the alliance came under new strains with Ms. Mufti attempting to adopt a more independent line, one that was in consonance with feedback from the cadre. But just as the two parties cannot fight the elections on the same electoral plank, they cannot afford to let go of their stakes in this government, for fear of conceding political space to their principal rivals. Closer to the next Assembly election in 2020, the alliance is likely to come under greater strain as the benefits of continuing in government will be outweighed by the risks of approaching an election together. Another similarly contentious issue closer to 2020 might not see the PDP and the BJP so eager to reach a compromise.

The Hadiya cautionThe case showed us how courts too can be propelled by impulses entirely opposed to the Constitution

SUHRITH PARTHASARATHY

One of the sorriest episodes in India's judicial history was finally brought to an end in March with the Supreme Court judgment in *Shafin Jahan v. Asokan K.M.*, or the Hadiya case as we've come to know it. Through two separate but concurring opinions, one written by Chief Justice of India (CJI) Dipak Misra, for himself and Justice A.M. Khanwilkar, and the other by Justice D.Y. Chandrachud, the court has reversed a most reprehensible ruling by the Kerala High Court. Yet, a collective reading of these opinions, released in a detailed order last week, tells us only a part of the story.

The judgment aims to speak in stirring language. It focuses attention on the centrality of individual freedom and autonomy under India's constitutional scheme. "It is obligatory to state here that expression of choice in accord with law is acceptance of individual identity," the CJI writes, in his characteristically fustian style. "Curtailment of that expression and the ultimate action emanating therefrom on the conceptual structuralism of obeisance to the societal will destroy the individualistic entity of a person. The social values and morals have their space but they are not above the constitutionally guaranteed freedom."

No apology

But this bombast veils the Supreme Court's own conduct in the case. The opinions do not offer anything resembling an apology for the court having allowed a savagely degrading process of decision-making to fester for far longer than it should have. Indeed, the entire case from its inception had been marked by a sense of tragedy. The tale it tells is depressing: that the courts, designed under our democratic scheme to act as a bastion of fundamental rights, are just as capable as the other wings of government in enforcing the most wrenching forms of paternalism.

It was in January 2016 when Mr. Asokan first approached the Kerala High Court. His grievance was that his daughter, who was born a Hindu, with the given name Akhila, and who had later converted to Islam, taking the name Hadiya, was being illegally detained against her wishes. But the court initially rejected these claims. Ms. Hadiya, it held, was staying at a hostel run by the "Markazul Hidaya Sathyasarani Educational & Charitable Trust" entirely of her own volition.

However, in August that year, Mr. Asokan once again went to the High Court, this time on an apparent apprehension that Ms. Hadiya was likely to be "transported out of the country". When the petition was still being heard, in December, she married Shafin Jahan. Just months later though, on May 24, 2017, the High Court granted Mr. Asokan her custody, and, what's more, annulled her marriage with Mr. Jahan altogether.

At play here was an inexplicable show of moralism. "A girl aged 24 years is weak and vulnerable, capable of being exploited in many ways," the Bench wrote. "This Court exercising *parens patriae* jurisdiction is concerned with the welfare of a girl of her age. The duty cast on this Court to ensure the safety of at least the girls who are brought before it can be discharged only by ensuring that Ms. Akhila is in safe hands."

Even intuitively there are two clear problems with this judgment: one, Ms. Hadiya wasn't a girl, but was an adult woman making her own choices on how she wanted to lead her life; two, Kerala, unlike some other States that have dangerously draconian anti-conversion laws, does not prevent an adult from converting to a different religion, or from marrying a person of different faith.

E.LAKSHMI NARAYANAN

A slow process

Astoundingly, though, when Mr. Jahan approached the Supreme Court against this verdict, the court didn't quite deem it necessary to grant Ms. Hadiya the bare dignity of a hearing, to ask her what she might have wanted. To the Supreme Court, much like it was to the Kerala High Court, she was only a girl; she simply couldn't be trusted to do the right thing.

When the appeal first came up for hearing, the court also didn't so much as venture to wonder how the Kerala High Court could get things so badly wrong, how it could have annulled a marriage in a proceeding for habeas corpus. It should have been obvious to the court that when judges introduce their own set of restrictions on liberty, not only do they impinge on principles of separation of powers, but they also violate their pledge to bear true faith and allegiance to the Constitution.

Instead, the Supreme Court Bench, presided at the time by CJI J.S. Khehar, unleashed the might of the National Investigation Agency (NIA) on the parties, directing the authority to probe into the case. The order, though, was silent on what the scope of this inquiry might be, in the process effectively granting the NIA a carte blanche, allowing it to wander where it pleased, well beyond its statutory limitations.

Eventually, it was only in late October last year – when the bench was headed by Chief Justice Misra – that the court finally called for a hearing from Ms. Hadiya. When it listened to her, it became clear to the court that she'd made her own choices, making the judgment that has now followed essentially unexceptionable. After all, it oughtn't to have required much in the way of analysis to see that the Kerala High Court's verdict was not only flawed, but that it had resulted in a flagrant miscarriage of justice.

Reaffirming principles

Habeas corpus has its origins in British common law, predating even Magna Carta. The idea behind the writ is to direct a detainee's presence in court so as to help the court understand if there was any legal justification for the person's imprisonment. The court's role, therefore, when a petition for habeas corpus is filed is narrow. It is only, as Chief Justice Misra writes, "to see that the detenue is produced before it, find out about his/her independent choice and see to it that the person is released from illegal restraint." When exercising this power, the court, the CJI holds, has to remember that an individual's decisions must be respected. If it becomes clear that a person isn't being held against her wishes, "the enquiry and determination have to come to an end."

But as routine as this verdict has ultimately proved to be, perhaps given the times that we live in, it was important that the court reaffirmed certain principles that lie at the heart of the Constitution: that, for instance, an adult person, possessing the ability to act out of her own will, should be allowed responsibility for her own life. After all, the Constitution affords protection to individual autonomy, to the intimate decisions that a person might make, whether they relate to speech, sex, marriage, procreation or religion. The state, which includes the judiciary, cannot interfere in these matters of personal foundation in a bid to enforce a collective ethical judgment. Individuals must be left to decide for themselves how they each want to lead their lives. A judge's holy writ cannot be used as a means to finagle the imposition of a coercive and majoritarian vision.

Or, as Justice Chandrachud puts it: "In deciding whether Shafin Jahan is a fit person for Hadiya to marry, the High Court has entered into prohibited terrain. Our choices are respected because they are ours. Social approval for intimate personal decisions is not the basis for recognising them. Indeed, the Constitution protects personal liberty from disapproving audiences."

These words, read in isolation, are no doubt rousing. But ultimately this was a case of the Supreme Court correcting errors of the judiciary's own making. The lessons to take away from it are many. Foremost among them is this: we must recognise that our courts too can be propelled by impulses entirely opposed to the Constitution, that the glory of judicial review, prized by us all, stands on fragile ground.

Suhrith Parthasarathy is an advocate practising at the Madras High Court

Marginalised from schoolThe Centre must review the implementation of the Right to Education Act across the country

SHASHI THAROOR

Although the recent Budget session of Parliament was appallingly disrupted by the ruling party's surrogates and Question Hour did not function most of the time, some things did work, almost on autopilot. Written questions submitted by MPs were indeed answered in writing - I got 26 of my questions admitted and answered – and while the more prestigious "starred questions" could not get asked, these "unstarred" ones have given us an instructive insight into some crucial aspects of government policy.

On education

My questions to the Minister of Human Resource Development in the Lok Sabha on the implementation of the Right to Education Act (RTE), almost a decade after its enactment, are a case in point. The answers I received are alarming, and definitely warrant an emergency review of the implementation of the Act.

It emerges from the Minister's replies to me that five States (Goa, Manipur, Mizoram, Sikkim and Telangana) have not even issued notifications regarding admissions under the RTE. As readers will recall, Section 12(1)(c) of the Act mandates private unaided schools to reserve 25% of seats for children from economically weaker sections (EWS), in the age bracket of six to 14 years. This enabled economically marginalised communities to access high quality private schools, at the expense of the State. While Telangana may be excused due to its recent formation, it is unjustifiable that the other States have failed to undertake the most basic steps to implement Section 12(1)(c) of an Act passed eight years ago.

States have to notify per-child costs to pay the private schools, on behalf of the children admitted under this provision. However, out of 29 States and seven Union Territories, only 14 have notified their per-child costs. The provision does not apply to Jammu and Kashmir and there are no private schools in Lakshadweep; therefore, as per the data provided, a shocking 20 States/UTs have still not notified the per-child costs, a blatant violation of the letter and spirit of the RTE.

It is also shocking to note that in 2017-18, of the 15 States which submitted their reimbursement claims to the Central government, only six were approved. Many of the claims of the States were not provided funds by the Centre, as they had not notified the per-child costs. In response to my query regarding the number of children admitted, per State, under the Section 12(1)(c) in the last three years, 18 States have claimed that the question is not applicable to them, without giving any reason for this response. This could mean that in 18 States, poor children are not even benefiting under this Act. If there are no data to record the number of students being admitted, it begs the question as to how States are reimbursing private schools. The respective State governments and the Centre should clarify this specific point.

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Many gaps to fill

According to Indus Action, an organisation which works in 10 States specifically on this provision, while there are higher order issues like the methodology used by States to calculate the per-child cost and lack of coverage of ancillary costs in the reimbursements, the absence of a streamlined disbursement framework both at the Central and State levels is one of the biggest reasons that reimbursements are not processed. If the States are not provided sufficient funds, private schools would be forced to bear the costs of the children. Civil society activists have informed me of instances of schools refusing to admit children under the RTE provision, citing non-payment of dues by State governments.

The data regarding the number of children admitted under Section 12(1)(c) of the Act, in States which provided the figures, are also distressing. The number of children studying under this provision increased by 6,12,053 from 2014-2015 to 2015-16, but by 5,02,880 from 2015-16 to 2016-17. The State of the Nation 2015 report by IIM Ahmedabad, based on official data obtained from the District Information System for Education, puts the total number of seats under this provision as 1.6 crore over the next eight years. This means that 20 lakh seats should be available annually for EWS children in private schools under the Act; however, according to the answer of the Minister, only 5-6 lakh seats are being filled on an annual basis.

The Preamble to the Constitution states that the democratic Republic of India shall secure social, economic and political justice. Education is undoubtedly the most important element in the movement to secure this end. Although the Directive Principles of State Policy mandate the state to provide children the right to access education, and the 86th constitutional amendment and the RTE dictate its implementation, it will only be fulfilled if sincere efforts are made by the States under the guidance and prodding of a committed Centre.

The executive is responsible for the implementation of RTE and the legislature has the duty to hold the executive accountable. Neither - judging by the evidence - has done its job properly.

As the malaise regarding the non-implementation of the RTE is spread across the country, the Central government should immediately convene a meeting with all the State education ministers and review the implementation of the law. The RTE aimed to provide a framework for private schools to supplement the efforts of the state to uplift disadvantaged sections of society through the means of education. We need to act immediately to address the gaps in the implementation of the law. The future of our children depends on it.

Shashi Tharoor belongs to the Congress party and is a member of the Lok Sabha

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.

Loya case

The Supreme Court ruling on CBI judge B.H. Loya's death is a victory for the BJP and its president Amit Shah ("SC throws out pleas for probe, rules Judge Loya died of natural causes", April 19, online edition). The ruling will also discourage frivolous PILs from now on.

B. VEERAKUMARAN,
Thiruvananthapuram

This ruling does not explain why Judge Loya's family had said he had been offered a bribe of ₹100 crore, why there were unexplained injuries on his body, and why all the data were erased from his phone when the instrument was returned to his family three days after his death, according to reports. Given the unexpected acquittal of all the accused in the Mecca Masjid case, which casts aspersions on the neutrality of the justice delivery system, the dismissal of pleas by the court in the Loya case could be seen by some as reluctance to bring out the truth.

C. CHANDRASEKRAN,
Madurai

Even though this has brought closure to the issue, the controversy is not likely to die down any time soon, especially as this was the case that caused four senior-most judges of the Supreme Court to hold an unprecedented press conference on this and other issues. e must accept the highest court's verdict, but one still wonders why the Maharashtra government opposed pleas seeking an independent investigation into Judge Loya's death if the death was only natural, as claimed.

S.K. CHOUDHURY,
Bengaluru

Condemning rape

The President's belated condemnation of the Kathua rape as "barbaric" speaks volumes about the gravity of the offence ("Kathua incident barbaric: Kovind", April 19). As President, Ram Nath Kovind ought to have passed strictures on the Central and State governments which allow such heinous acts to go on all the time despite huge amounts being spent on law-enforcement agencies. By only speaking of this as a societal problem, the President has failed to take this opportunity to point out how law and order needs to be improved across States.

J. EDEN ALEXANDER,
Thanjavur

Faith in the judiciary

The editorial "A credibility crisis" (April 19), which states that the National Investigation Agency did a poor job of handling the case, reminds me of one of India's most eminent judges, Justice V.R. Krishna Iyer. Justice Iyer was the vacation judge in the Supreme Court when he got a call from the then Union Law Minister, H.R. Gokhale, who was also a close friend. The Minister wanted to visit Justice Iyer regarding the verdict in the Indira Gandhi case. Justice Iyer refused to meet him and advised him to file an appeal and seek an early hearing. At a time when one is losing faith in the judiciary, with the NIA judge resigning after his judgment, one wishes we had more people like Justice Krishna Iyer around.

SHEFA RAFI,
Coimbatore

Avoid plastic

It is too early to call the discoveries of plastic-eating enzymes as big victories. One can't help but feel cynical about all this, given how plastic pollution remains the same despite earlier discoveries of this nature ("Researchers engineer plastic-eating enzyme", April 17). For instance, in 2014, there was a report that three strains of bacteria that can degrade plastic materials such as polythene had been discovered on the coast of Gujarat. Then, in 2016, a group of Japanese scientists said that bacteria called *Ideonella sakaiensis* could eat plastic bottles. These discoveries were heartening, but they haven't been put to use yet and it may be long before they are put to use.
The solution is not to keep waiting for discoveries which will give us an excuse to keep using plastic, but to avoid using plastic and instead adopt biodegradable alternatives. But being consumerist, we are unable to do so.

C.V. KRISHNA MANOJ,
Hyderabad

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