Fiscal Decentralisation and the Role of State Finance Commission

The 73rd and 74th Amendments to the Constitution have provided constitutional status to Panchayats, Municipalities to function as local self-government institutions. The Constitution also provides for States to devolve, through legislation, functions to these institutions as illustrated in the Eleventh and Twelfth Schedules of the Constitution for rural and urban local bodies, respectively.

While the States have generally assigned most of these functions to PRIs, the corresponding devolution of funds and functionaries remains a critical issue. The own source revenues of the local bodies being very small, they largely depend on the devolution of funds from the Central and the State Governments and Finance Commissions.

There is an urgent need to vest the Panchayats, with adequate tax and non-tax powers and at the same time ensure that the fiscal powers given are effectively exercised since generating own revenue is the best way to increase autonomy, credibility and accountability of the Panchayats.

Fiscal decentralisation therefore, needs to be viewed as a comprehensive system of strengthening the financial resource base of the Panchayats so that the assignment of expenditure functions is matched with devolution of funds.

To address this issue, **the Constitution provides for setting up of a State Finance Commission** every five years to review the financial position of the Panchayats (and also urban local bodies) and recommend criteria for distribution of financial resources between the State and the Panchayats as also other measures to improve the financial base of the Panchayats. Thus, the State Finance Commissions, SFCs, have vital role to play in the scheme of decentralization, while arbitrating on the claims to the resources by the local governments and the State Governments and ensuring greater stability and predictability to the transfer mechanism.

Also there has been growing concern about the smooth functioning and capacity of the SFCs. Several SFCs themselves are not adequately staffed and lack the required infrastructure and resources. The database on various aspects of Panchayats' functioning is inadequate for the SFCs to take informed decisions and make recommendations accordingly. The States have the basic responsibility of enhancing the credibility of the SFCs. The SFCs, therefore, need to be strengthened and their work and reporting streamlined in many ways including some standardization in their method and approaches.

There is wide variation in the assignment of functions, funds and functionaries across States, it is not feasible for the Finance Commission to carry out a detailed assessment of the finances of local bodies in each State nor has such a role been assigned to it under the TOR or the Constitution. The Constitution envisages that the needs of local bodies within the State shall be assessed in detail by the SFC, which will recommend the required transfer of resources from the State to them. Therefore, it is appropriate that the needs of local governments are assessed in detail by the SFC. The FFC has further observed that despite the passage of time, SFCs in many States continue to work with a lot of disadvantages. The FFC has recommended that the States should facilitate effective working of SFCs, through timely constitution, proper administrative support and adequate resources and timely placement of the SFC reports before State legislatures, with action taken notes and timelines for completing actions.

14th Finance Commission:

1. More than 2 lakh crore rupees have been earmarked for Gram Panchayats during 2015-20.
2. Distribution of grants to states for local bodies using 2011 population data with weight of 90% and area with weight of 10%

3. Grants in two parts; a basic grant, and a performance grant, for duly constituted Gram Panchayats and municipalities. The ratio of basic to performance grant is 90:10 with respect to Panchayats and 80:20 with respect to Municipalities.

There are over 2.6 lakh panchayats in India. The primary emphasis will be on provision of basic services like rural infrastructure, sewage, sanitation and water supply.

Disability Watch: Towards a life of dignity and independence

The United Nations' International Day of Persons with Disabilities was celebrated on December 3, 2015.

The 2015 commemoration coincided with 20 years of the passage of the **Persons with Disabilities Act, 1995** — the first-ever legal protection in post-independent India exclusively targeting people with various, **though not all, impairments.**

The law has been creatively used by the people with impairments and by their parents to ensure that their disability was not held against them in the enjoyment of **equal rights and opportunities**.

The gradual transformation set in motion by the 1995 law has, if anything, raised hopes and expectations among the disabled for an even better **life of dignity** and **relative freedom from dependency**.

A potent political weapon

The 1995 law has, in its two-decade history, proved a potent political weapon to effect fundamental changes at the macro level.

1. The enumeration of disabilities in the population census, for instance, became a reality in its 2001 exercise. The translating the lofty goals enshrined in the law into reality was contingent upon ascertaining the number of people with impairments in the population.
2. Delays and discrepancies in the allotment of suitable positions in services like those of the UPSC is fast becoming a thing of the past.

The recently launced **Accessible India initiative** (**Sugamya Bharat Abhiyan**) aims to achieve a barrier-free environment within a specific time frame in relation to the built structures, transportation and in the arena of information and communication technology, is a welcome step.

The new Bill on disabilities

The Bill finalised by the government:

1. Seeks to accord legal recognition to as many as 19 categories of disabilities, as opposed to just five under the current law.
2. The vacancies sought to be reserved in education and employment is close to twice the current proportion.
3. The incorporation of penal provisions is sure to lead to better enforcement.

India and the UNCRPD

India is a signatory to the **UN Convention on the Rights of Persons with Disabilities (UNCRPD).**

Article 9 of UNCRPD casts an obligation on all the signatory governments to take appropriate measures to ensure to persons with disabilities access, on an equal basis with others,

1. to the **physical environment**,
2. to **transportation**,
3. to **information and communications**, including ICTs and systems, and
4. to **other facilities and services** open or provided to the public, both in urban and in rural areas.

Sugamya Bharat Abhiyan

Department of Empowerment of Persons with Disabilities (DEPwD), Ministry of Social Justice and Empowerment, has formulated the Accessible India Campaign (Sugamya Bharat Abhiyan), as a nation-wide campaign for achieving universal accessibility for PwDs.

The campaign targets three separate verticals for achieving universal accessibility namely:

1. The built up environment,
2. Transportation eco-system and
3. Information & communication eco-system.

The campaign has ambitious targets with **defined timelines** and will use IT and social media for spreading awareness about the campaign and seeking commitment / engagement of various stakeholders.

Other initiatives of the Department

1. The Department has asked various State Govts. to identify about 50 to 100 **public buildings** in big cities and also identify citizen centric **public websites**, which if made fully accessible would have the highest impact on the lives of PwDs.
2. Once identified, "**Access Audit**" of these buildings and websites will be conducted by professional agencies.
3. As per the audit findings, **retrofitting and conversion** of buildings, transport and websites would be undertaken.
4. 'Accessible police stations', "Accessible hospitals' and 'Accessible tourism' will be created.
5. **Accessibility of TV programmes** will be enhanced by incorporating features like captioning, text to speech and audio description.
6. A **mobile app**, along with a **web portal** for crowd sourcing the requests regarding inaccessible places and delivery of information (like location of nearest accessible places) will be created.
7. This will be supported by the **Scheme of Implementation of Persons with Disabilities Act (SIPDA),** an umbrella scheme run by the DEPwD for implementing various initiatives for social and economic empowerment of PwDs.

Is it constitutional to keep women off Sabarimala, asks Supreme Court

1. The Supreme Court said that: Religious customs and temple entry restrictions have been violating women's constitutional rights. No temple or governing body could bar a woman from entering the Sabarimala shrine in Kerala where lakhs of devotees throng every year. Unless a constitutional right to prohibit women entry exists, one cannot prevent them from worshipping at the shrine. There is a difference between a temple meant for the public to worship and a mutt.
2. Women in the age group of 10-50 are not allowed entry. The prohibition was based on 50-year-old custom.
3. Women, aged 10-50, touching the idol was considered an act of desecration.
4. The Kerala High Court had upheld the ban in 1991 and directed the Devaswom Board to implement it.

The case against customary exclusion

The question of whether women can be barred entry to the Sabarimala shrine in Kerala demands a solution that advances the constitutional guarantee of equality, non-discrimination and freedom of religion.

Constitution

Article 25(1) guarantees to all persons the right to freely profess, practise, and propagate their religion. Mirroring this, **Article 26(b)** grants to religious denominations the right to manage their own affairs in the matter of religion.

Overriding both these provisions, **Article 25(2)** allows state intervention in religious practice, if it is for the purpose of "social welfare or reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus".

Supreme Court

Over the years, the Supreme Court has restricted the scope of the religious protection clause to "essential practices of a religion". While holding that the state cannot use the reform clause to "reform a religion out of existence", it has nonetheless held that aspects beyond essential practices have no protection from state intervention.

The Supreme Court has also accepted that the right to worship, as well as modes of worship, are protected by Article 25(1).

Issues

1. The right to freedom of religion under Article 25(1) is enforceable against the state, and not against other individuals, or corporate bodies. The question that the court must answer therefore is whether the Travancore Devaswom Board, which controls access to the shrine, can be equated to the "state".

   Previously, the Supreme Court has held that corporate bodies that are "functionally, financially and administratively" under the control of the state can be equated to the state for the purposes of fundamental rights.

2. The Supreme Court has held that if one private party obstructs another private party from exercising her constitutional right, then it is the duty of the state to effectuate her right by restraining the former from continuing with its obstruction. Therefore, the women worshippers may ask the court to direct the state to take all necessary steps to guarantee that they are allowed to access and worship at the Sabarimala shrine.

3. The Kerala Hindu Places of Worship Rules speak about "customs" and "usages". The Supreme Court has held that while personal law is exempt from the application of the Constitution, mere 'custom' is not. It might therefore simply strike down the offending rule on the ground that it discriminates on grounds of sex, and therefore violates the Constitution.

Misdiagnosis of the Rajya Sabha malfunction

The productive sessions of the Rajya Sabha in recent times has triggered outrage, with some questioning the need for an Upper House at all. Some others have opined that an indirectly elected body such as the Rajya Sabha should not be allowed veto powers over a directly elected Lok Sabha.

Eforts to thwart productivity of either House of Parliament are condemnable and should trigger a debate on reforms to minimise them. However, mere opposition to a bill in the Rajya Sabha that has been passed by the Lok Sabha cannot be an excuse to curtail its powers. **It is important to separate the two issues, legislative productivity vis-à-vis legislative dissent.**

1. **Check against whims:**
   Mohammad Tahir representing Bihar in the Constituent Assembly during the debate on the Constitution on July 28, 1947 said that "the Upper House is a creation of imperialism" and argued that independent India did not need it. To this, the mover of the debate, Gopalaswami Ayyangar, replied that "the role of the Upper House is merely to delay legislation which might be the outcome of passions of the moment until the passions have subsided". It was obvious even to our founding fathers that the "House of People" (Lok Sabha) can fall prey to passionate rhetoric and thus felt a need for a "House of Elders" (Rajya Sabha) to instil calm.

The powers of the Upper House to delay and oppose legislation passed by the Lower House were recognised and enshrined right from the very birth of the Rajya Sabha. So, to argue that the Rajya Sabha is being obstructionist for merely opposing legislation of the Lower House is a flawed argument.

2. **Narrative of being indirectly elected yet having veto powers over the directly elected Lok Sabha**:
In our first-past-the-post electoral system where a political party can form a government without the majority of citizens voting for it, legislation passed by the Lok Sabha may not necessarily represent the views of the majority. The percentage of seats won in the Lok Sabha by a political party is not the same as percentage of Indians voting for that party, as we all know. It then becomes even more pertinent and critical to have an active and vibrant Rajya Sabha.

   That the Rajya Sabha would act as a balance to certain whimsical legislation of the people's representatives in the Lok Sabha was a conscious design of our founding fathers.

   It is thus futile to argue that somehow directly elected representatives are better lawmakers than those indirectly elected, and hence should be subordinate. The inability to build consensus by a ruling party cannot be disguised as opposition obstruction and elicit calls for reducing the powers of the Rajya Sabha. The need to build consensus in both Houses should be the guiding principle of our parliamentary democracy.

3. **Anti-Defection Act**
It disqualifies any MP who either **changes political parties midway** or **disobeys the whip** of her party, aggravates the chances of a dysfunctional Parliament.

   The core principle behind the Act is to prevent horse-trading on the floor of the House and penalise members who succumb to temptations from opposition parties. This principle still remains very relevant for a large, diverse polity such as ours, with a large number of regional parties.

   The choice of when to issue a whip rests with the party. The Anti-Defection Act in itself cannot be made responsible for an internal matter of political parties over degrees of freedom to be given to their members for voting in Parliament.

Scope for reform

There is clearly a need for new rules to prevent productivity of the entire House being held hostage by a few members rushing to the Well. There has to be an outlet for opposition members to voice their protests without disrupting productivity. One suggestion is to have ***designated day(s) in a week on which the opposition can raise, discuss and debate issues rather than the government dictating the order of business every day of the session*.**

Measures for Judicial Reform

Striking down the NJAC bill, the Supreme Court has clearly expressed its lack of confidence and faith in the political class to preserve and protect the independence of the judiciary. However, the court has also acknowledged the deficiencies of the collegium system and is looking forward for some reforms.

Quick look at collegium system and its history:

The **Constitution does not envisage a collegium** of judges to select judges. It was virtually proposed by the lawyer community and the public who were distinctly uncomfortable with the intrusions into the independence of the judiciary in the 1970s and 1980s. When the Supreme Court devised collegium system, it was widely welcomed.

However, public and lawyer community were unhappy with this system too. It was proved, in some cases, which even judges also can be men of straw. The lawyers and the public realised that like any normal human being, several of the members of the collegium did not rise above their religion, caste, gender, language, family, friends and other affinities.

What are the other areas that need immediate attention?

- **Vacancies** in the SC and in the High Courts need to be filled up. Most HCs are functioning with half or one-third the sanctioned strength.
- **Persons of doubtful integrity** who might have been appointed by the mistake of the collegium have to be weeded out. A method has to be found without the process of impeachment, and voluntary retirement could be an option.
- **Infrastructure** in the courts needs improvement — there will not be enough court halls, chambers, or staff, if all the vacancies are filled.
- **Appointment of ad hoc or additional judges** to clear pending cases — the reluctance of the collegium to appoint retiring judges as ad hoc judges is baffling.

How the present collegium system can be improved?

1. Accepting applications for appointments as High Court judges should be followed. This is followed in the U.K. and can be adopted in India too.
2. There must be full and complete disclosure of relationships and affiliations of applicants to sitting and retired judges.
3. Minimum eligibility criteria for consideration need to be laid down, including appearances in important cases.
4. Parliament should also enact changes to provide a uniform retirement age for judges of the Supreme Court and the High Courts, so that the present practice of some of the judges seeking to be in the good books of the existing or prospective members of collegiums in the Supreme Court is avoided. This will also obviate the argument of expectation based on seniority for appointment as judges of the Supreme Court.
5. The retirement age may be raised uniformly to 70 with a condition that no judge retiring at 70 shall be appointed as a member of any Tribunal.
6. The continuation as a judge after the age of 65 should be subject to being found 'not unfit' by the Permanent Commissions.
7. A minimum tenure of two years should be provided to the Chief Justice of India and the Chief Justice of High Courts.
8. No judge who is more than 68 years should be made a Chief Justice.
9. Court management should not be vested with Judicial Officers but assigned to trained managers.
10. All the three organs of the state should also introspect as to why there has been no or inadequate representation in the higher judiciary from amongst women.

Proposal for a Permanent commission:

1. There is also a proposal to create a permanent commission to allay the fears of intrusion into the independence of judiciary. It should be a three member Permanent Commission which will scrutinise the credentials of candidates and recommend names.
2. The Commission may consist of three retired Chief Justices of India for appointment of judges to the Supreme Court.
3. Four such similar Commissions may be constituted for the four regions of India with a retired judge of the Supreme Court as a Chair Person and two retired Chief Justices of the High Courts as members.
4. The tenure of the Chair person and members of the Commission should be three years.
5. The recommendations of the collegiums in the High Court may be forwarded to the Regional Permanent Commission which shall then send its recommendations to the collegium in the Supreme Court.
6. The selection of these permanent commissions should be made by a committee consisting of the Chief Justice of India, two senior most judges of the Supreme Court, the Prime Minister and the Leader of the Opposition in the Lok Sabha.
7. The collegium in the High Court may recommend a panel which is twice or thrice the number of existing and expected vacancies and, on scrutiny, the Commissions can recommend a pruned list of names to the Supreme Court Collegium.
8. These Permanent Commissions should also be vested with the power to scrutinise complaints of dishonesty and lack of integrity of judges, to make recommendations to the collegiums to withdraw work from those judges pending impeachment.

Limited Finance Limits Democracy

India's campaign finance rules are frequently violated. It is now a well-known fact that candidates in Indian elections grossly overshoot spending limits imposed by the Election Commission (EC). Such violations create deeper problems for representation and democracy at large. The major Indian political parties agree that spending limits in Indian elections, and the country's campaign finance rules in general, are unreasonable and have called for a radical rethinking of campaign finance rules.

What has the Election Commission been doing?

To keep it in line with ground realities, particularly inflation, the EC has been increasing the spending limit from time to time. In the 2014 Lok Sabha elections, each candidate was allowed to spend a maximum of Rs.70 lakh in his or her constituency, representing an increase of Rs.30 lakh over the 2009 limit. However, such moves have not reduced the number of spending violations.

Challenges being faced by the political parties:

- Current limit of Rs.70 lakh implies a total spending of just Rs.3-4 per individual in a constituency, which is a lot less than what the EC itself spends on conducting elections.
- In terms of the time for campaigning, the period per constituency currently stands at just a few weeks, with restrictions on the resources a candidate can deploy, such as the number of vehicles that can be used. Many of these constituencies are rural, with about 10-15 lakh individuals spread across thousands of villages. Covering these villages poses a significant challenge for candidates.

What should be done?

To reduce the number of violations, the spending limits should be closer to the actual amount candidates need to campaign effectively, and that requires an exponential increase in the spending limits.

Who prescribes the campaign finance rules and why do we need it?

- Election commission of India prescribes such rules. The authority of the election commission comes from the Representation of People Act, which states, "the total of the said expenditure shall not exceed such amount as may be prescribed."
- The primary objective behind the EC's campaign finance rules is to level the playing field.

How such restrictive campaign rules infuse corruption into day-to-day politics?

Due to the official limits, candidates rely almost completely on unaccounted cash from undisclosed donors, which essentially renders all the other transparency initiatives of the EC redundant. Once in office, the candidates must find ways to repay their debts to these donors, and often do so by favouring them through policy changes or resource allocation. Thus the restrictive campaign finance rules infuse corruption into day-to-day politics.

According to the Economist:
"Money power has proven to be the more powerful by far. The EC sets limits on both fundraising and expenditures, but they are laughably ineffective. Political parties and candidates must break the rules in order to stand a chance of winning. This drives them into the arms of the criminal underworld, especially at the local level: that is where they find the men who have ready access to the "black money" that escapes the official banking sector, and the networks to disperse it."

How such rules are leading to lower levels of representation?
The low limits on campaign finance have a large impact on the very essence of representation. For voters to make an informed choice, it is imperative that candidates and parties get their message across to each voter. For voters to make the right choices, they need to understand and respond to the candidates' policy positions and sometimes interact with the candidates themselves. With the current rules, a law-abiding candidate would not have the resources nor the time to make that happen. This implies lower levels of representation and consequently greater arbitrariness in voting decisions, both of which are harmful to democratic accountability and democracy at large. Politicians then turn to middlemen to mobilise votes with the all too obvious negative consequences.

Conclusion:
Electoral corruption in India is a product of the institutions and systems that we have put in place. The limits on election spending, along with the other restrictive campaign finance rules of the EC, perpetuates a tightly-guarded socialist mindset among many Indian policymakers, which often makes them wary of individual affluence. By relaxing these rules, the Election Commission will be able to not only increase compliance, transparency and representation in Indian elections, but also help align India's politics with its new economics.

Income Tax Appellate Tribunal (ITAT)

1. ITAT is a quasi-judicial institution set up in January, 1941
2. Constituted by virtue of section 5A of the **Income Tax Act, 1922**.
3. It specializes in **dealing with appeals** under the **Direct** Taxes Acts.
4. The orders passed by the ITAT are final
5. An appeal lies to the High Court only if a substantial question of law arises for determination.
6. ITAT is referred to as **'Mother Tribunal'** being the oldest Tribunal in the country.

Historically speaking, **tax was introduced in India by the Act of 1860**, where assessment was made by a Panchayat and a person feeling aggrieved by the order could appeal to the Collector of the District, whose order was final.

Driot Administratif

The concept of Tribunals has been borrowed from the **French system of 'The Droit Administratif',** which referred to a system of administrative courts that ran parallel to the civil courts. The intention behind this system was to ease the civil courts from administrative matters while laying separate standards for administrative disputes.

A complete adaptation of Driot Administratif is not possible in India because judicial review of Tribunals' orders cannot fully be removed.

Problems:

1. There have been instances of delays and favouritism as well though the Courts have consistently held that these bodies must maintain procedural safeguards while arriving at their decisions and observe principles of natural justice.
2. Increasing tribunalisation encroaches upon the judiciary's independence and is contrary to the constitutional scheme of the separation of powers between judiciary and the executive.
3. Though they were supposed to address the issue of delays and pendency in the existing judicial system, they seem to be bogged down with the same problems.
4. It is alleged that the tribunals lack independence and are no better than the administrative arm of the Ministries.

Tribunals function differently from courts, from the manner of appointment to the procedure followed. The Tribunals do not have to follow the uniform procedure as laid down under the Civil Procedure Code and under the Indian Evidence Act but they have to follow the principles of natural justice.

Tribunals must constantly evaluate their internal procedures to look for the avenues for improvements:

1. Digitization of documents
2. Setting up of e-courts,
3. New ways and means to speed up disposal, for time bound justice.
4. Taking up reforms like Pre-trial hearing, so popular in developed countries.

Management and Regulation in Education Sector

Without proper regulation, there is little to protect students from disreputable or fly-by-night institutions. There is a growing unregulated sector of higher education that may be offering insufficient provision to students. This has the potential to damage India's reputation as a leading provider of higher education. It also threatens students' confidence that the thousands of rupees they pay in fees will secure them a top-quality education, at an institution that will not go bust.

- Image of country
- Progress of science
- Effect on the students quality of education, career and financial burden
- Commercial case for better regulation: it encourages businesses to invest in the sector and banks to lend institutions money.

Problems:

1. Absence of an effective regulatory or grievance-redress mechanism in the higher education sector
2. Little urgency in trying to rescue students trapped in vicious environments that put their families in financial hardship and deprive them of a meaningful academic life.
3. Lack of honest and meticulous scrutiny of an institution's real strengths by academics, officials and experts vested with the responsibility of inspecting and certifying colleges

4. Regulatory agencies grant approval mainly based on documents submitted by the private institutions and undertake only random on-site inspections.
5. Many universities grant affiliation if a college fulfils even 60 per cent of the stipulated requirements.
6. Such porous systems are exploited by unscrupulous colleges to submit fabricated records and obtain approvals
7. Post-approval, there is no enabling environment to encourage students to raise grievances relating to over-charging and academic deprivation.

Reforms needed:

a. **Right to Education Bill:** to open up the entire education sector to greater investment and to allow children to go to the school of their choice, through a loan scheme, both in higher education as well as public education.
b. Assigning unique identification numbers to teachers of professional colleges to prevent duplication in faculty rolls has been pending for years.
c. Installing biometrics for monitoring in-times and out-times of faculties
d. The strengthening of regulatory systems
e. The appointment of academicians with uncompromising integrity to head regulatory bodies and universities
f. Common regulator: The idea should be to keep the diversity of the system and encourage dynamism and some self-regulation, while ensuring that all institutions are maintaining common standards and safeguarding students.

Right to freedom of speech and expression.

Article 19(1) (a) grants to the citizens a right to freedom of speech and expression. But Article 19(2), limits this freedom, and accords the state the express authority to make laws that establish reasonable restrictions on speech, on various grounds, including contempt of court.

Contempt of Courts Act, 1971

Parliament enacted the Contempt of Courts Act, with a view of **defining and limiting the powers of courts** in punishing acts of contempt.

The Act recognises two common forms of contempt

1. **Civil Contempt** to include, among other things, a wilful disobedience of a court's judgment, order or direction.
2. **Criminal Contempt** to include publications that do one or more of the following:
   (a) scandalise or lower the authority of any court;
   (b) prejudice or interfere with the due course of any judicial proceeding; or
   (c) interfere with or obstruct the administration of justice in any other manner.

India's courts have routinely invoked the long arm of its contempt powers to often punish expressions of dissent on purported grounds of such speech undermining or scandalising the judiciary's authority.

In a 1996 decision, the Supreme Court ruled that "all acts which bring the court into disrepute or disrespect or which offend its dignity or its majesty or challenge its authority" amount to punishable contempt."

Amendments to the Act

In 2006, with a view to reducing the breadth of the judiciary's powers, Parliament amended the Contempt of Courts Act of 1971. The law now provides two additional safeguards in favour of a dissenter:

1. It establishes that a sentence for contempt of court can be imposed only when the court is satisfied that the contempt is of such a nature that it substantially interferes, or tends to substantially interfere with the due course of justice.
2. The truth in speech now constitutes a valid defence against proceedings of contempt, if the court is satisfied that the larger public interest is served through the publication of such content.

Article 356 of the Constitution and Governors' powers

Dr. B.R. Ambedkar believed that Article 356 of the Constitution, which provides for imposition of President's rule in the States and dissolution of State Assemblies, would, in reality, be only a **'dead letter'**.

However till 1994, the provision originally meant to be used sparingly had been invoked over 90 times. The casual resort to imposition of President's rule or dissolution of State Assemblies at the whim of the ruling party at the Centre was ended and the potential for further misuse was removed through the Supreme Court judgement in the ***S.R. Bommai v. Union of India*** **case (1994).**

The judgement provided that:

1. A presidential proclamation under Article 356 is subject to **judicial review**,
2. The power of the President to impose PR is not an absolute but a **conditional power**,
3. No Assembly can be dissolved before **both Houses of Parliament ratify** the proclamation.

Governor's discretion and powers

- **Article 163:** states that the question whether any advice, and if so what advice, had been given to the Governor shall not be gone into by any court; and when a question arises whether the matter on which the Governor had acted was actually one on which he can use his discretion, the decision made by the Governor in his discretion will be final.
- **Article 174(1):** Power of the governor to summon or prorogue the Assembly
- **Article 175(2):** Power to send messages, even fixing a specific item on the agenda of the legislature, under

Question?

A crucial question before the Supreme Court is whether the Governor can, in his discretion and without the aid and advice of the Council of Ministers, summon the legislature or advance a scheduled sitting; and whether he can fix the agenda for such a session on his own.

Future course:

Time may have come to go beyond even the floor test requirement in ascertaining whether a particular regime commands a majority.

Just as unscrupulous defections are legally discouraged, **opportunistic cooperation between ruling party dissidents and Opposition legislators just to bring down a Chief Minister may also have to be prevented.**

1. The Governor can ask the Chief Minister to submit **proof of his support** within his own legislature party or alliance partners before ordering a floor test.
2. In the event of some factions withdrawing their support to the government, the Governor can always turn them away and ask them to move a no-confidence motion instead of coming to him.
3. If there is any attempt by the Speaker or the Chief Minister to block such a motion, or if the Assembly is not convened, the Governor should not hesitate to write to the party's leadership seeking proof of its legislature party still having only one leader.
4. In case an incumbent government fails to follow this process, the Governor can recommend that the Centre give a **suitable direction to the State under Article 365**. It shall be lawful for the President to then hold that because of any non-compliance with the direction, the State can no more be run in accordance with the Constitution.

Sarkaria Commission Recommendations:

Governors are seen as sinecures for friends of the ruling party and its formerly active members and associates. New norms will have to guide both the appointment of Governors and their functioning. The recommendations of the Sarkaria Commission on Centre-State relations can be implemented with regard to choosing Governors.

It had said a Governor should be **someone eminent in some walk of life**, and should not be one "who has taken too great a part in politics generally, and particularly in the recent past".

IIM BILL CONTROVERSY

Where the IIMs stand now

After the UPA government in 2012 gave the nod for a modified Memorandum of Association, the IIMs were empowered to trim the board size from over 26 to 14, appoint alumni members on the board and decide the pay structure of staff and faculty, independent of pay commissions. Changes were made based on the recommendations of the three committees - on governance, faculty and funding, constituted in 2010 by then HRD minister Kapil Sibal.

Where do finances come from?

IIMs mainly depend on their executive education programmes and alumni contributions for regular revenue generation and government grant-in-aid, except for IIM-A, -B and -C who have opted out of receiving grant from the HRD ministry. On the other hand, most new IIMs have been dependent on grants for campus building and other infrastructure funding.

What the IIM Bill 2015 entails

- The Bill proposes to **grant statutory status to 13 existing IIMs** at Ahmedabad, Kolkata, Bengaluru, Lucknow, Indore, Kozhikode, Shillong, Raipur, Ranchi, Rohtak, Kashipur, Tiruchirapalli and Udaipur.
- The Bill would enable IIMs **to grant degrees instead of a postgraduate diploma and fellowship programmes.**
- The current Fellow Programme in Management (equivalent to a PhD), which isn't a formal degree, hasn't been able to attract talented students, required to develop a strong research base and address faculty shortages.

What the IIMs stand to lose

Every decision taken by the Board of Governors about **appointment** of chairpersons, directors and faculty members, **fixing of fees and remuneration**, changes in **curriculum** and decisions on the institute's **infrastructure**, will be subject to the approval of the HRD ministry. The IIMs say the board will be reduced to an implementing body void of any decision-making powers. They also argue this step is contrary to the previous regime that allowed more autonomy by way of modified MoAs. The IIMs, though, will remain under the Right to Information Act and will have to get their accounts audited by the Comptroller and Auditor General.

Who can grant degrees?

Currently, technical institutes, including those offering management education, and affiliated with universities, which are approved by the All India Council for Technical Education (AICTE), can alone grant degrees.

Recommendations of R C Bhargava Committee:

It was proposed to create a pan-IIM Board, consisting of 15 members. The idea was shelved as it didn't go down well with the IIMs.

1. The chairman would be nominated by the PM and the secretary of the Board be one of five govt. nominees
2. The Board would review the performance of each IIM once every two years, and advise the govt. on all matters
3. IIM alumni should be inducted to the Board.
4. The Board will have full powers to select and appoint the director; raise funds; determine fees for all courses; create or abolish posts; and determine conditions of service of all those appointed on contract.
5. IIMs should build a scholarship fund to provide assistance in genuine cases.
6. IIMs should sponsor and support students to procure PhDs.
7. All IIMs older than five years should be able to generate a small operating surplus.
8. MBA programme fee should be fixed after taking into account all incomes, and the need to have a small surplus.
9. Surplus should be used to partially fund infrastructure, and to build the scholarship fund.
10. Govt. might fund 70% of all new capex in the older IIMs. The rest should be raised by the IIMs. New IIMs would need to be fully funded by the government.
11. Academic & administrative functions in IIMs should be separated to enhance efficiency and give faculty more time to teach.

Right to Education (RTE) Act

- The **Right of Children to Free and Compulsory Education Act**, is an Act of the Parliament enacted on 4 August **2009**, which describes the modalities of the importance of free and compulsory education for children between 6 and 14 in India under **Article 21A** of the Indian Constitution.
- The Act came into force on **1 April 2010**, making India one of 135 countries to make education a **fundamental right** of every child.
- The Act is applicable to all categories of schools (government and private).

Main Features of Right to Education (RTE) Act, 2009

1. Free and compulsory education to all children of India in the 6 to 14 age group.
2. No child shall be held back, expelled or required to pass a board examination until the completion of elementary education.
3. If a child above 6 years of age has not been admitted in any school or could not complete his or her elementary education, then he or she shall be admitted in a class appropriate to his or her age. However, if a case may be where a child is directly admitted in the class appropriate to his or her age, then, in order to be at par with others, he or she shall have a right to receive special training within such time limits as may be prescribed. Provided further that a child so admitted to elementary education shall be entitled to free education till the completion of elementary education even after 14 years.
4. Proof of age for admission**:** For the purpose of admission to elementary education, the age of a child shall be determined on the basis of the birth certificate issued in accordance with the Provisions of Birth, Deaths and Marriages Registration Act 1856, or on the basis of such other document as may be prescribed. No child shall be denied admission in a school for lack of age proof.
5. A child who completes elementary education shall be awarded a certificate.
6. Call need to be taken for a fixed student–teacher ratio.
7. 25% reservation for economically disadvantaged communities in admission to Class I in all private schools is to be done.
8. Improvement in the quality of education is important.
9. School teachers will need adequate professional degree within five years or else will lose job.
10. School infrastructure (where there is a problem) need to be improved in every 3 years, else recognition will be cancelled.

11. Financial burden will be shared between the state and the central government.

Status of Education after 5 years of the Act

1. Kerala became the first State to achieve 100% primary education, but in Uttar Pradesh, only 12 out of 75 districts have admitted students from disadvantaged groups to private schools.
2. A large number of Dalits, Adivasis and girls discontinue education because of **discrimination in schools**.
3. More than 60% of urban primary schools are **overcrowded**, and about 50 per cent of Indian students cannot do basic mathematics or read a short story when they complete elementary education.

Welfare State

The Constitution provides a flexible framework for a welfare state.

- **Article 39** directs the state to frame policies that distribute the "ownership and control of the material resources of the community" such that it serves the "common good", and "provide opportunities and facilities that enable children to develop in a healthy manner in conditions of freedom and dignity".
- While Directive Principles are non-justiciable, **Article 37** commands that they shall be "fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws".

The **Kothari Commission** recommended a **common school system (CSS)** to "bring the different social classes and groups together and thus promote the emergence of an egalitarian and integrated society". The CSS was adopted by both the **1968 and 1986 national policies on education**.

While the interventions from '**Operation Blackboard'** to **Sarva Shiksha Abhiyan** brought universalisation and quality to the forefront, the CSS was somehow relegated to the background.

RTE Act: Hurdle for schools

Despite giving far greater value for money (learning per unit of cost), thousands of low-fee private schools are being forced to shut down in India.

The reasons:

1. The requirement of the RTE Act that all private schools must mandatorily get government recognition by complying with the norms stipulated in the Act and in State RTE Rules.
2. Also, many additional conditions for 'recognition' have been added in States' Government Orders (GO).
3. Low levels of teacher accountability and low student-learning levels have caused parents to desert publicly funded schools.

Many government schools themselves do not fulfil the norms and standards of the RTE Act, but are not obliged under the Act to be closed down. This is discriminatory as well as cynical: if the Act's framers believed these norms to be quality-enhancing, then they should also apply to government schools (where 70 per cent of the poorest children study) as well.

A **Right to Quality Education Act** needs to be enacted, to underscore the importance of ensuring learning.

1. It should give central attention to teacher accountability.
2. It should give attention to the use of the power of financial incentives (for instance, making government and aided schools' funding either through a voucher or a per-student grant such that the school loses funding if student numbers fall, as happens in OECD countries).
3. It should give attention to using the power of parental information about the quality of different schools in their town or city, so parents can exit schools where learning is low, thereby giving poorly performing schools an incentive to make more of an effort to retain students.

4. There should be strengthening of teachers' subject-matter knowledge via restructured teacher training.

Need for Space Act

The government's new endeavour is to inject satellite-based technology into governance and numerous common uses.

1. Today, space-related activities are done [as per] business rules. The process to be adopted by the government for these activities has to be defined because the government is responsible for any object put up in space and for what happens to it in orbit or because of it.
2. As more and more industries get involved in space activities, there should be clarity on what they can do and what they can't.
3. The number of countries as buyers of satellites or solutions has increased.
4. There has been an increased start-up activity in space related areas.
5. The government should spell out how it will deal with issues and untoward incidents
6. The law will provide the approach for commercial use of space, international collaborations and international treaties; and state regulatory mechanisms.

The existing **Satellite Communication Policy** and **Remote Sensing Data Policy** will continue to be available as independent policies.