



The judicial role in improving lawmaking

Rushed laws, rendering Parliament a rubber stamp, sacrifice core ideals of a constitutional democracy.

Hasty lawmaking:

1. Chief Justice of India (CJI) N.V. Ramana highlighted this problem, noting that the ambiguities and gaps in laws passed without meaningful deliberation trigger avoidable litigation.
2. While the CJI suggested that lawyers and intellectuals enter public life to improve deliberation, the judiciary can also play a crucial role in improving the lawmaking process.
3. Many rely on the volume of Bills passed by Parliament in a session as a measure of its efficiency. However, this measure is flawed as it does not account for what is lost when efficiency is achieved by passing laws without adequate notice and deliberation.
4. Most, if not all, of these laws, create burdensome obligations on persons and often affect their fundamental rights. Legislators, as representatives of the people, are expected to exercise a duty of care before casting their vote.
5. This entails due deliberation about the implications of the law, posing amendments and questions to the concerned Minister, and requiring expert evidence through standing committees.
6. Rushed lawmaking, rendering Parliament a rubber stamp, sacrifices two core ideals of constitutional democracy, namely, equal participation and respect for fundamental rights.

Evaluating legislative process

- The judiciary can play an important role in improving the lawmaking process and securing these ideals. A straightforward way of doing this is by enforcing the text and spirit of the constitutional provisions governing legislative procedures.
- The Constitution contains certain detailed provisions laying out how laws are to be passed by Parliament and the State Legislative Assemblies.

Voice Vote vs recording Votes:

- Unfortunately, these are often undermined. For example, even when the result through voice votes are unclear, the exact number of “ayes” and

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“nays” are not always counted, suggesting that Bills may be passed without securing the majority vote required under Article 100.

- This issue arose most recently when the controversial farm laws were reportedly rushed and passed by voice vote in the Rajya Sabha despite objections by Opposition members.

Money Bill Bypass Route:

- Similarly, Bills are certified as Money Bills to bypass the Rajya Sabha even where they do not meet the specific description of Money Bills provided under Article 110.
- There are seven areas that can be governed through the enactment of Money Bills, including the imposition of the tax, the regulation of borrowing and appropriation of money out of the Consolidated Fund of India.
- In the Aadhaar case, the Supreme Court, to an extent, recognised its power to check whether such procedural provisions had been complied with. However, these provisions will only be taken seriously if the judiciary addresses their violations in a timely manner.
- The longer a challenge is pending, the more ground the State has to argue that rights and obligations created under the law should not be disturbed for a “mere” procedural violation.

Judicial Review crucial for responsible inclusive law making

- In exercising judicial review, the court’s role is to call on the State to provide justifications explaining why the law is reasonable and, therefore, valid.
- The judiciary can also make deliberation a factor in choosing whether to employ the doctrine of “presumption of constitutionality”. This doctrine requires the court to exercise restraint and defer to legislative judgments on the reasonableness of a law. It is rooted in the fiction that the legislature is a widely representative, deliberative organ, and thus “understands and correctly appreciates the needs of its own people”.
- When laws are passed without deliberation and without examination of the empirical basis on which they are premised, the State usually finds it more difficult to explain why such laws constitute a reasonable restriction on rights and, therefore, heavily relies on the doctrine of presumption of constitutionality to resist close judicial scrutiny.
- By extending this doctrine to such laws, the judiciary undermines the guarantee of judicial review provided to protect fundamental rights.

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- Instead, if the judiciary confines the doctrine only to cases where the State shows that laws and their consequences were carefully deliberated in Parliament, the judiciary can encourage legislative bodies to ensure a deliberative lawmaking process.

Remedying dysfunction

1. The CJJ's suggestion that the legislature is reformed from within is admittedly the ideal solution to remedying legislative dysfunction without raising concerns of separation of powers.
2. However, legislative majorities have little incentive to cooperate for such reform, and significant public mobilisation on the issue would be necessary to change this.
3. Against this backdrop, the judiciary can and should employ the tools available to it to nudge legislative bodies to improve their lawmaking processes.
4. In fact, striking down laws on procedural grounds also mitigates concerns of separation of powers in certain respects. Unlike review on purely substantive grounds, it does not foreclose legislative bodies from re-legislating the issue and ensuring that the procedural defects in the law are rectified and the law is properly deliberated in Parliament.

The Indian judiciary has often demonstrated that it is possible to enrich democracy by addressing dysfunctions in other institutions. By adopting a swift and systematic approach to reviewing the legislative process, the judiciary can help restore faith in the 'temples of democracy' and push us toward the culture of justification the Constitution sought to create.

Practice Mains

Q. The judiciary can play an important role in improving the lawmaking process and securing constitutional ideals of the representative democracy. Critically discuss.

Recalibrating Affirmative action: Need a caste census

It would provide up-to-date data to calibrate reservation, but threaten social justice claims of a caste-conscious compensatory discrimination regime.

Challenges to affirmative action policy:

1. First, the 50 per cent limit on caste-based quotas, propounded by the judiciary, imposes a serious limitation on states' power to expand the

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composition of backward class beneficiaries. In most states, the existing quotas for SC, ST, OBC and SBC already breach this benchmark.

2. The government's inertia regarding the expansion of the quotas raises questions about its pro-OBC credentials, as OBC reservations remain under-implemented in central services (where the representation of the OBCs was below 22 per cent in 2016), and unimplemented in many central universities (where 47 per cent of the posts reserved for OBCs were vacant in 2017).
3. The erosion of the public sector has resulted in a steady decrease in the number of jobs occupied by Dalits in the reservations framework. For instance, the number of civil service candidates shortlisted by the UPSC dropped by almost 40 per cent between 2014 and 2018, from 1,236 to 759.
4. This evolution was primarily due to old trends like the rise of vacancies and the privatisation of Public Sectors Undertakings. As a result, between 2011-12 and 2017-18, due to the fall in employment of 2.2 lakh jobs in Central Public Sector Enterprises, the reduction in employment of SCs amounted to 33,000 jobs.

Caste Census: Rationale

1. The census data would provide up-to-date evidence that would help analyse the accomplishments as well as the limitations of reservation policies. It would showcase the magnitude of the gap between economic and social capital acquisition within and between the general category as well as the reserved sections.
2. The census would also be instrumental in revising the benchmark for social, economic and educational backwardness. The absence of information about the general category's material attainments and accumulation does not permit a measure of social disadvantage.
3. This is particularly problematic in today's India where social progress, achievement and mobility are determined more than before by access to corporate capital and English proficiency.

Significance of data:

1. The caste census would also provide much-needed rigour to the findings and recommendations of Union and state-level backward caste commissions.
2. This is imperative because their recommendations are often declared "unreasonable" and "arbitrary" by the judiciary – like in the case of

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Justice Gaikwad Commission that proposed granting of SEBC quota to the Maratha community.

- 3. The Commission's findings on the lack of educational attainments amongst Marathas were clouded by the fact that Marathas were socially dominant.*
- 4. This decadal data can illuminate the precise dynamics of social and market-driven processes of converting caste-based social capital to economic and in turn educational and professional progress.*
- 5. It would also provide insights on the emerging axis of marginalization and backwardness in the privatizing economy.*

Apex call for data:

- 1. A caste census would also facilitate compliance with recent court decisions. The Supreme Court, in *Chebrolu L Prasad v State of AP (2020)*, directed the Centre to periodically revise the list of reservation beneficiaries based on sound sociological evidence.*
- 2. Another 2020 decision, *Davinder Singh v State of Punjab* has opened the question of sub-classification within the SC category, thus raising the need for credible data on internal differentiation and sophisticated educational and occupational profiles.*

The modern teacher's challenge

To stay true to S Radhakrishnan's vision in the information age, a teacher must endeavour to help students sift facts from false news, and constantly update her skills and knowledge.

Role in transforming education:

- 1. One of Radhakrishnan's prominent interventions in public life, before he became the vice-president, was to suggest improvements in the country's university system. The Radhakrishnan Commission Report was independent of India's first evaluation of the university system.*
- 2. Re-inventing the role of the teacher, in the spirit of the educator-statesman's vision, has been a constant imperative — though not always appreciated.*
- 3. It has deviated badly from Radhakrishnan's vision. The corruption in this sector, the role of money in teacher recruitment, promotion, transfer and research supervisors accepting favours from scholars would have shocked the educator statesman.*

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4. In a rapidly-changing world, a teacher must keep updating her knowledge. In these times of information glut, students often enter classrooms with more information on a topic than teachers.
5. With Google becoming an easily available “guru”, should the teacher be just a disseminator of information?
6. As French essayist Joseph Joubert puts it, “To teach is to learn twice over.” So, the teaching process is an opportunity for the teacher to re-learn with her students. Thus, a good teacher will remain a life-long student.

The role of Awakener:

1. But there is another facet of modern-day life that demands the teacher’s intervention. In a world of excessive unprocessed information, there is very often a thin line between truth and fake news. That can muddle impressionable minds.
2. Here lies the responsibility of the teacher. The poet Robert Frost had once said, “I am not a teacher, but an awakener.”
3. The Covid-19 pandemic has added to the teacher’s challenges. The online mode of instruction asks questions of both the teachers and students.
4. India’s digital deficit has exacerbated educational equality on the one hand and on the other hand, there is talk of online instruction becoming a part of the educational milieu in times to come.
5. The teacher has to grapple with such contradictions and also guide students as they navigate these trying times. Bill Gates’ statement about technology replacing the traditional classroom is reassuring: “Technology is just a tool. In terms of getting the kids to work together and motivating them, the teacher is the most important factor.” Radhakrishnan had put it aptly, “True teachers are those who help us think for ourselves”.