

Election expectations: Judiciary's present trend and future direction



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For multitudes of people in India nowadays, dawn breaks out literally at the court's doorstep. In the past decade, some old laws were scrapped giving way to the new ones. To crown it all, an important court verdict delivered recently gives stability to democracy. Now that parliamentary elections 2024 are drawing closer, it is necessary to speak about the judiciary's contemporary trends and future expectations.

Important verdicts

It was only in the past decade that the judges (now retired) - Kurian Joseph, Chelameswar, Madan Lokur and Ranjan Gogoi – spoke openly about the issue of judges' appointment in several interviews. Many court judgments including those on demonetisation, Ayodhya Ram Janmabhoomi issue, women's entry into the Sabarimala temple, scrapping of Article 370 in Kashmir and denial of legal recognition to same-sex marriage have been delivered.

The Supreme Court has slammed the monetary transactions done in the name of election trusts in 2013 and in the name of electoral bonds since 2018. In the case, the apex court has defined the voters' right to information under the Article 19(1) (a), saying that the voters have the right to know the monetary transactions done by political parties when they are electing a government that is set to rule them. The Supreme Court has ordered the State Bank of India to submit the details of profits every party has earned through electoral bonds. Eventually it scrapped the electoral bond system, terming the electoral bond monetary transactions of the parties that are supposed to serve the people as ultra vires.

There are three important features of the functioning of law and judiciary.

1. Old and new laws

In December, 2023, Bills were introduced in Parliament to scrap 78 old laws which have not been in effect for long. Besides, the Indian Penal Code, Evidence Act, and Criminal Procedure Code were re-christened in Sanskrit; their content too was changed.

How do the changes happen? From December 4 to 22, 2023, 19 Bills were listed in Parliament. New laws were enacted when 150 opposition members of Parliament had been suspended. At this juncture, it is worthwhile to recall the words of Justice N. V. Ramana, who was the Supreme Court Chief Justice in 2021, “The passing of Bills without sufficient discussion is deplorable.”

Meanwhile, Home Minister Amit Shah has termed three century-old laws as remnants of colonialism. At the same time, it was alleged during discussions that the new laws brought in by the BJP government vest the army and police with more stringent powers and that women’s rights are, to a large extent, affected. The time given for discussing the new laws was not enough, said the BJP woman MPs themselves.

Cases beyond the purview of law are also filed in courts. Talking about this phenomenon, former SC Chief Justice Ramana said, “Though the court has no locus standi or power in formulating policies, when a citizen comes calling with a complaint, the court cannot decline to hear his/her voice. Therefore, laws fulfilling the people’s needs in deference to their desires must be passed after deep discussions.”

Justice V.R. Krishna Iyer too echoed the same sentiment, saying, “The judiciary in a country should not be a mere spectator. On the contrary, when injustice is meted out to the people, it should rush in with expeditious measures like the fire-fighting department. It cannot afford to be like a referee in a wrestling match.”

2. What’s needed for administration of justice

This question was discussed in the case filed by the All-India Judges’ Association (All-India Judges Association Vs Union of India 2002 (4) SCC 247). It goes without saying that a sufficient number of courts with sufficient rooms and seats and drinking water and toilet facilities are absolutely necessary. Yet the most important is the sufficient number of judges. The present situation is that there are only 16,000 judges for the staggering three crore cases. The ratio of judges must be enhanced. That is, the present ratio of 10.5 or 15 judges per 10 lakh litigants must be raised to 50. In the High Courts, 59 per cent of judges’ vacancies are yet to be filled. Without fulfilling all these needs, enacting new laws will amount to loading the shoulders of the courts with more burden.

3. What the courts look forward to

Lots of cases are pending in the Supreme Court against the Citizenship Amendment Act enacted in 2019. After new rules for the Act were framed on March 11, 2024, secularism, the bulwark of the Indian Constitution, is in jeopardy and the Articles 15, 21 and 21 (a) have become shaky.

Meanwhile, Abhijit Gangopadhyay, a judge in the Calcutta High Court, resigned on March 3, 2024. Earlier he was in confrontation with Justice Soumen Sen and the Supreme Court suo

moto took up the case of conflict between these two judges. In these circumstances, on the very day he laid down office, Gangopadhyay expressed his inclination to contest the parliamentary elections as a BJP candidate. When asked why he could not join any other party, he said he was a proud Hindu. Consequently questions are now raised against the credibility of verdicts he delivered when he had been in the Calcutta High Court (he ordered CBI probe in 14 cases).

Besides, the allegation has been gaining traction that the union government, while collecting taxes from the states, does not give back sufficient funds to fulfil their needs. That is why Kerala and Tamil Nadu have moved the Supreme Court on this count. So, it is the bounden duty for the court to streamline the concept of federal rule.

Meanwhile, the cold war between the judiciary and the union government persists manifestly. The Chief Justice of the Supreme Court used to be very much part of the committee consisting of the Prime Minister and the Leader of Opposition for selection of the Indian Election Commissioner. But now the union government has ignored the CJ and in his place, added a union minister to the panel.

Once Nobel Laureate Amartya Sen said, “India is being broken up. But the judiciary looks the other way.” But it is not true on all occasions.

On the one hand, there are instances wherein judges set to retire soon became mouthpieces of the government, eyeing future benefits and positions and on the other, there are judges who dare to take bold decisions to safeguard the Constitution.

Justice Krishna Iyer once said, “No country can stand on injustice. No nation founded on injustice can stand forever from sandy Egypt, from the crystal forest of Athens to Rome, which crumbles stone by stone.”

These words are worth being engraved in memory!

Translated by V. Mariappan.