





“Ben Stokes’s batting to win England the third Test match of the current Ashes series was one of the most extraordinary demonstrations of sporting excellence of the last 50 years.” —THE GUARDIAN

## Reforming the Law Commission

The government should enshrine in law, the composition, tenure, functions and work procedure of the panel



TAHIR MAHMOOD

OVER A MONTH ago, the media reported that Cabinet will soon take a call on reconstituting the Law Commission (IE, July 15). There has been no further public information on the progress in the matter. The last commission had gone out of office a year ago, on August 31, 2018.

The Law Commission of India — the oldest amongst the national-level parastatal bodies — remains an odd one even in its 65th year. Unlike its sister organisations, established much later, it has no fixed composition, no defined eligibility criteria for its chair and members, and no set functions — everything rests on the government’s will. The terms of reference are specified afresh each time it is reconstituted as if it were an ad hoc body. It is an enigma to many as to why this oldest commission is still being treated in such a casual way while three of the other national commissions of later years, those for the Scheduled Castes, Scheduled Tribes and Backward Classes, are now regulated by the Constitution and there is a parliamentary charter for each of the national commissions for human rights, minorities, women, children and safai karmcharis.

The Law Commission is a legacy of the country’s colonial past. In 1833, our British rulers unified, under a centralised dispensation, the three presidencies they had been ruling for long, and planned to enforce the English common law in the whole of what they called “British India”. To translate their plan into action they constituted many law commissions. The work of these bodies transformed India into a common law country. After the fourth commission completed its work towards the end of 19th century, the rulers, sensing the beginning of an uprising for home rule, did not continue the exercise.

The eighth year of Independence, the Government of India decided to revive the British legacy of appointing law commissions to study, research and report on legal matters specified in their terms of reference. The first commission, set up in 1955 for a three-year term, assumed charge on September 1 that year and vacated office on August 31, three years later. From September 1, of a given year, to the same date three years later was then irrationally adopted as the fixed term for the commission for all time to come irrespective of when a new commission was constituted and entered office. Consequently, each of the later commissions worked for less — some for much less — than three years, leaving their assigned work half way.

Though the commission’s job requires research-oriented juristic learning, which cannot essentially be the outcome of judicial experience, the commission has been a haven for retired judges. The chairpersons of the four pre-independence Law Commissions — C H Cameron, John Romilly, Whitley Stokes and Thomas Macaulay — were eminent jurists, not judges, and so were many of their members. Independent India initially main-

tained the tradition by appointing the distinguished jurist M C Setalvad as the chairman of its first Law Commission. The policy was later changed, and with the sole exception of the fifth commission which was headed by a non-judge (the first law secretary K V K Sundaram), the commission has always been headed by judges.

Members of the commission are also generally drawn from the judiciary, and the member-secretary is always from the bureaucracy. Of course, there have been some immortal names among them. The eighth commission was headed by the legendary judge Hansraj Khanna who had sacrificed his chance of being CJI by dissenting from the infamous majority judgment in the habeas corpus case of the Emergency days (*ADM Jabalpur*, 1976). The inimitable jurist-judge V R Krishna Iyer served as a member of the commission before being elevated to the apex court bench in 1973.

Reports of the commission are generally written individually by members including the chairman and placed before the full commission for discussion and adoption. Quite a few of these reports have been on the Hindu and Christian family laws, but none on the Muslim personal law. The apex court had once suggested that the issue of reform of Muslim law be entrusted by the government to the Law Commission which should work on it in consultation with National Minorities Commission (*Sarla Mudgal*, 1995). Commenting on it, the civil servant-turned-politician Mani Shankar Aiyar remarked: “What faith will the minorities have in the pronouncements of an all-Hindu Law Commission?” (*Confessions of a Secular Fundamentalist*, 2004).

The 18th Law Commission, with former Supreme Court judge A R Lakshmanan as the chairman and I as its only full-time member, was 50 per cent Muslim but the community still did not have “faith” in it. Three of the four reports written by me for the commission were criticised by Muslim clerics for their indirect “adverse effect” on the community’s supposedly sacrosanct law and my learned chairman shied away, for fear of a “backlash”, from endorsing my fourth report, seen as directly touching the Muslim law. In light of this experience, I strongly feel that if the commission has to work without regard for extra-legal and political considerations it must have a governing statute defining its powers and responsibilities, and limitations.

Before constituting the 22nd Law Commission — though the exercise is long overdue — the institution should, in my opinion, be placed under a proper parliamentary charter. The government of the day, which has conferred constitutional status on the National Backward Classes Commission, overhauled the governing law of the National Human Rights Commission and set up a Rashtriya Kamdhenu Ayog for the preservation of bovines, will do well to determine by legislation, the composition, tenure, functions and work procedure of the Law Commission. It should be a predominantly jurists’ commission, not a retired judges’ collective with a sprinkling of legal scholarship and jurisprudential expertise.

The author is former chairman of National Minorities Commission and member, Law Commission of India

## The consensus builder

Arun Jaitley brought together states with vastly different views on the GST to ensure the country’s economic integration



C R Sasikumar

ated by the committee of officers from across the country. He also put into place an arrangement whereby every meeting of the Council was preceded by a meeting of the officers of the state and the Centre. This meeting of the Officers’ Committee proved to be a key strategy in consensus-building: The technical details were thrashed out in such meetings and the Council could then have the benefit of discussing issues over which a broad consensus had already evolved. The Council would then refine this through protracted discussions.

He formed a group comprising about a dozen senior ministers from across the political spectrum, and representing varied view points on the matter, for discussing and resolving the issues that eluded consensus. The issue would get discussed threadbare in the group and almost invariably get resolved in the next meeting of the Council.

Another strategy that he often adopted on particularly contentious issues was to refer the matter for detailed analysis by and consideration of one of the many specialised committee of officers that were constituted for aiding and advising the Council in the exercise of its functions. The issues concerning the real estate sector were particularly vexing and the committees sat over them more than two times and were also directed to hold joint meetings. As Chairman of the Council, Arun ji urged non-member states to join in these deliberations so that the issue could be resolved. The tax rate on lottery was another issue which seemed headed for voting. But Arun ji saved the day by calling for a dual rate structure which found favour with all the concerned states. At times, he would defer discussions on a contentious issue, allow people to mull over it and approach the discussion in the next meeting from a different angle.

The tax rates in case of government works and the tax structure of the restaurant sector had been hotly debated in the Council with feelings running high among the different sides. But the master strategist that he was,

He put into place an arrangement, whereby every meeting of the Council was preceded by a meeting of the officers of the state and the Centre. This meeting of the Officers’ Committee proved to be a key strategy in consensus-building: The technical details were thrashed out in such meetings and the Council could then have the benefit of discussing issues over which a broad consensus had already evolved. The Council would then refine this through long and protracted discussions.

Arun ji managed to convince everyone in the next meeting by proposing a middle way and concentrating on the agreed points. The issue of taxing powers in territorial waters was another contentious issue, wherein not much was at stake yet feelings ran high. Arun ji explained the constitutional provisions and yet accommodated the viewpoint of the states by charting a middle path. It eventually became Section 9 of the IGST Act.

The taxation of branded food products was also hotly debated in the Council and when the issue seemed to run into legal hurdles, Arun ji actually suggested a formulation for the draft notification. He often let the states argue their position at length, heard every possible viewpoint patiently and resolved the issue by calling for some give and take, but never allowing matters to reach a flashpoint without compromising on the basic principles. Even the most trenchant advocates of a viewpoint were goaded into coming around to a common view. The issue of TDS and TCS were resolved by deferring them till such time as everyone was ready for these taxes while the universal applicability of the national e-way bill system was resolved by permitting flexibility to the states in case of intra-state movements.

Being associated with and having observed the proceedings, I can unhesitatingly state that it was Arun Jaitley who translated the prime minister’s vision of GST into reality. This was particularly trying in the initial period when the alliance holding office at the Centre did not have as much representation in the Council as it now has. It is testimony to the immense respect he commanded across the political spectrum that a body comprising the Centre, 29 states and seven union territories did not ever have to resort to voting. He was a politician, an officer and a thorough gentleman. But above all, he was the ultimate consensus builder, ever prepared to walk the last mile and take that extra step to take everyone along.

The writer is deputy chief minister, Bihar

## Poised for a leap

Fundamentals of Indian economy are sound. Growth is on the horizon

SYED ZAFAR ISLAM

fruitful in the long run. Many claim there is a feeling of fatigue in the world’s sixth leading economy after a long run of high growth. Even at the forecasted rate of 6.30 per cent, the Indian economy continues to be the fastest growing among the top global economies. The not-so-impressive growth rate of 5.8 per cent in one quarter shouldn’t lead to fears

Yes, there is a slowdown. But we have not entered uncharted territory. Modi-1 had inherited a largely informal, cash economy with a burgeoning, chaotic unorganised sector. Of course, India had changed beyond recognition following the reforms of the 1990s, but large parts of the economic activity had remained ensconced in the past. The Modi government embarked on game changing plans to formalise the economy. Demonetisation and GST were the two bold changes the government had to make in the national interest.

Another factor that has contributed to the slowdown is less-than-normal rainfall in the recent past (thankfully, this year the monsoon is good). Unfortunately, this factor is generally overlooked in the debate. The elections may also have contributed to the slowdown. Forced by the code of conduct during the elections, the government was unable to spend on schemes or announce big reforms. As a result, the growth in capex had slipped to 2 per cent from the previous quarter of 12 per cent and impacted in GDP by around 80

bps. India’s slowdown is also firmly linked to the global trend and the ongoing US-China trade war is not helping matters.

It will be a great service to your country if you do not panic. Our economy is on a very sound footing. Our macro indicators are all good. Consider this: Forex reserves are an all-time high at \$491 billion; CPI inflation is tracking at 3.2 per cent and has remained below the 4 per cent mark for nearly 12 months. Core inflation has also decelerated meaningfully in the last 12 months. Gross FDI flows remains robust tracking at close to 2.4 per cent of GDP on a 12-month trailing basis.

PMI manufacturing and services for July saw an improvement compared to a slowdown in previous month. This is encouraging and it suggests that the economy has shown improvement and also accelerated the job creation.

The juggernaut of the Indian economy has generated so much energy over the years that a strong momentum has been in motion for the last few decades. It’s continuing to propel the economy forward. The government was not exactly sitting idle before Finance Minister Nirmala Sitharaman announced a series of welcome measures at a press conference last week and reiterated her resolve to fix the problem at another meet on Tuesday.

Some in the industry have argued that there was a crisis of confidence between lenders and borrowers and between the government and industry. They had urged the

government to look into it. The FM has done exactly that. The infusion of Rs 70,000 crore to PSU banks will shoot up lending to the tune of Rs 5 lakh crore, assuming banks leverage it seven times. The government is launching structural changes in the agriculture sector, such as modifying the Essential Commodities Act.

Government spending is going to pick up following the good monsoon. Consumption will rise as we are entering the festive season. Growth will come. It will come from improving exports, from investment and from disinvestment. The government is encouraging private investment, as announced in the budget. The foreign investors’ shares have been increased. It is bound to attract more investment from abroad. We believe that government can exceed the disinvestment target for the year, which stands at Rs 1.14 lakh crore.

The forecast is not exactly gloomy for the next quarter and beyond, but yes, it’s not in double digits immediately. With PM Modi’s continued focus on reforms, credit flow and ease of doing business and with his infectious optimism, it’s very likely that we will achieve the \$5-trillion mark by 2024/2025 assuming we hit the average GDP of 7.5 per cent and rupee-dollar remains stable around 70.

The writer is national spokesperson of the BJP and former managing director, Deutsche Bank, India. Views are personal

## LETTERS TO THE EDITOR

### INVISIBLE TRAGEDIES

THIS REFERS TO the article, ‘When his heartbeat dropped’ (IE, August 28). It has been 24 days since the abolition of Article 370 and the curfew being imposed in the Kashmir Valley. A section of media shows pictures of Kashmir where it looks as though the “life is normal”. How long will the people be trapped in their houses? Does the government have a plan to end the curfew? **Dhaval Trivedi, Pune**

THIS REFERS TO the article, ‘When his heartbeat dropped’ (IE, August 28). The writer has expressed his anguish over losing the life of the baby, yet to be born to his sister, likely because of the communication blackout in the Valley. This story has been brought to us as the brother of the unfortunate woman is a journalist. But, as the article says, many similar stories may have gone unnoticed. **Vandana, Chandigarh**

### RIGHTS REVOKED

THIS REFERS TO the article, ‘The verdict of history’ (IE, August 28). There will be from time-to-time an over-arching executive, which seeks to change the fundamental nature of a constitutional democracy for its ideological ends. In such times, the judiciary is meant to stand up for the Constitution’s “basic structure”. The right to free speech and expression stands revoked in Kashmir. People born on Indian soil, “natural cit-

### LETTER OF THE WEEK AWARD

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izens” could well be denied citizenship in Assam, even as the flawed NRC process hangs over the entire country as a threat. The Supreme Court consists of the finest legal minds in the country. It must have the moral courage to not be swayed by arguments of national or cultural insecurity. There is reason why the judiciary is independent and does not contest elections. **Shatam Ray, via email**