WORDLY WISE

THE PERSON WHO TALKS MOST OF HIS OWN VIRTUE IS OFTEN THE LEAST VIRTUOUS.

— JAWAHARLAL NEHRU

The Indian EXPRESS

FOUNDED BY RAMNATH GOENKA

BECAUSE THE TRUTH INVOLVES US ALL

LETTING IN LIGHT

Supreme Court does well to open CJI office to RTI. But transition to greater judicial transarency won't be easy

THE SUPREME COURT'S decision to open the office of chief justice of India to scrutiny under the Right to Information Act is enormously welcome. The ruling comes nine years after the Delhi High Court ruled in favour of bringing the CJI's office under RTI. It is a remarkable case where the Court, in its administrative avatar, appeared as a litigant before its judicial avatar, argued against transparency and eventually ruled against itself. For an institution that has insulated itself from public scrutiny and one that gives little insight into its own functioning, the verdict pushes the envelope on greater judicial accountability. The tug of war between the executive and judiciary on appointments is often complicated by the reluctance of the court to make the reasons and compulsions behind its decisions public. While the government discloses its reasons for not accepting the collegium's recommendations, the judiciary's defence remains absent from public debate.

However, there is reason to be circumspect in celebrating the verdict. The verdict binds the court to accept applications seeking information but the process of obtaining it may not be easy. The ruling allows for an ordinary citizen to seek information on appointments, transfers of judges to the high courts and Supreme Court but the reasons behind these recommendations could still be clouded in secrecy as the decisions of the collegium are largely based on reports of the Intelligence Bureau which is exempted from providing information under RTI. The verdict itself asks information commissioners to keep in mind the right to privacy and the independence of the judiciary while deciding on RTI requests. Justice NV Ramana, in his separate opinion, cautions that the RTI must not be used as a tool of surveillance against the court.

Institutionally, the transition to transparency may not be easy and hinges on the actions of the chief justice of India, as administrative head of the court. Eight chief justices retired without hearing this difficult case. Even when former CJI Dipak Misra decided that collegium decisions, along with reasons, will be published on the Supreme Court website, CJI Ranjan Gogoi signalled a departure from the practice after 256 decisions were published. Just two months ago, when criticised for transferring former Madras High Court Chief Justice VK Tahilramani to Meghalaya High Court, the collegium headed by CJI Gogoi issued an unusual statement that though "it would not be in the interest of the institution to disclose the reasons for transfer, if found necessary, the Collegium will have no hesitation in disclosing the same." The reasons never came and Justice Tahilramani resigned subsequently. However, the fact that the five-judge bench comprises of three future chief justices — NV Ramana, DY Chandrachud and Sanjeev Khanna — is reason to hope for a new era of transparency in the Supreme Court.

FAILURE TO LAUNCH

Andhra CM Jagan Reddy needs a governance vision that goes beyond undoing Chandrababu Naidu's work in office

JAGANMOHAN REDDY WON office in May by defeating Chandrababu Naidu. His YSR Congress swept Andhra Pradesh, winning nearly 50 per cent of the votes and 151 of 175 assembly seats; Naidu's Telugu Desam was reduced to a rump in the House. But six months into his tenure, Reddy, one of the youngest CMs in the country at 47, threatens to be a major disappointment. The latest in a series of actions, undertaken, ostensibly, to undo Naidu's legacy in the state, is the move to terminate the Andhra Capital Region Development Authority's (CRDA) agreement with a Singapore consortium to develop a 6.84-km greenfield start-up area in Amaravati, the designated capital of Andhra Pradesh post bifurcation in 2014. The start-up area was to have a host of facilities, including pay-and-plug offices and generate nearly 50,000 jobs on completion.

The decision to cancel the project must be read in the backdrop of the Reddy government maintaining that it doesn't intend to develop Amaravati as a world-class city, as Naidu had wanted. Clearly, Reddy is haunted by the spectre of Naidu's legacy looming over Amaravati. It is not as if Reddy has an alternate plan for the new capital. His vision, unfortunately, seems to be blinded by his obsession with all that Naidu built or proposed. So, bureaucrats have to drive out to meet Reddy in his camp office outside Amaravati, instead of the latter receiving them in the CM's chamber in the secretariat, built during Naidu's tenure. Elsewhere in Amaravati, work has stalled on many infrastructure projects. Funding agencies, including the World Bank and Asian Infrastructure Investment Bank, have backed off. With dismal signals being sent out by the government, the city is unlikely to attract any fresh investment, which the state desperately needs. Amaravati needs to be built not merely as a legacy project, but also to ensure that neighbouring Vijayawada is not forced to shoulder the burden of an under-developed state capital. Moving beyond Amaravati, Reddy's initiatives, such as village secretariats, a parallel bureaucracy of 1.26 lakh new recruits, and the push for re-tendering old projects, are likely to result in cost overruns and bleed the state economy.

The government's lack of a governance plan is compounded by its hostile approach to critics. Government departments have been told to sue the media in the event of reports that officials perceive as defamatory. Reddy needs to realise that governance calls for a more generous vision of both the past and the future.

NEHRU'S CHANAKYA

India's first PM was his own vocal critic. That served democracy well, and is something leaders today can emulate

IN 1937, AN article published in Modern Review, written by Chanakya, described the then president of the Congress as having "all the makings of a dictator in him — vast popularity, a strong will directed to a well-defined purpose, energy, pride, organisational capacity, ability, hardness, and, with all his love of the crowd, an intolerance of others and a certain contempt for the weak and the inefficient." Ten years later, Jawaharlal Nehru became the first Prime Minister of India. Chanakya's fears and doubts about Nehru's liberal and democratic character turned out to be largely unfounded. Or, given that Chanakya was Nehru's pseudonym, it is perhaps the ability to reflect on his own shortcomings that kept them from consuming the man and the young democracy he led.

It is hard, today, to imagine India as anything other than a democracy. But all around the young nation, other newly-decolonised countries crumbled to dictatorships, military and political, and the promise of freedom gave way to despondency as the leaders of freedom struggles did not brook opposition. Curiosity, erudition, decency, diversity — these were the underpinnings of India's first prime minister's personality and for long, and in no small part, they influenced the country of which he is a founding father.

Chanakya also wrote: "A little twist and Jawaharlal might turn a dictator sweeping aside the paraphernalia of a slow-moving democracy. He might still use the language and slogans of democracy and socialism, but we all know how fascism has fattened on this language and then cast it away as useless lumber." In its first 17 years, the Indian republic was fortunate to have a check over executive power that was more than just constitutional — it stemmed from the personal and political morality of a flawed and yet great man. Perhaps India, on his 130th birth anniversary doesn't need a Nehru — its political landscape is painted in colours too stark for his complexities, it is too inebriated by a politics of identity. But Nehru's alter ego, Chanakya, remains an example of how politics can be a space more capacious.

Listen, Mister Muslim

Let's recognise our own complicity in becoming the convenient 'Other' for Hindu nationalists

JAVED ANAND

LISTEN, MISTER MUSLIM. You are rightly upset with the verdict of the Supreme Court on the Ayodhya land dispute as it puts faith above law. Not for the first time, secular India has let you down. But truth to tell, you too have let secular India down. In this zero sum game between the Indian state and you, it's been advantage Hindutva all the way.

This is not to rub salt in your wound. But to point out that Muslims as a community are guilty of the very same thing they are accusing the Supreme Court of: Pitching Shariah law against the Indian Constitution, faith against the law of the land. The rigid, intransigent Islam that our ulema and political leadership continue to preach leaves us little space for manoeuvre or room to negotiate a respectable place for ourselves in a secular-democratic polity. Such inflexibility is bound to land us in the ditch, again and again, be it on the question of a masjid, triple talaq, Muslim Personal Law in general, or the issue of population control.

It's time for some honest introspection. Was it not us who took to the streets in 1985, protested aggressively against the apex court's judgment in the Shah Bano case, insisted that Shariah law took precedence over the secular law of the land?

The then Congress government under Prime Minister Rajiv Gandhi capitulated and the result was the Muslim Women (Protection of Rights on Divorce) Act, 1986. Faith triumphed over a secular law (Section 125 of the CrPC) and Muslims were euphoric. The consequence: Secular-minded Indians were outraged, while Hindutva organisations grabbed the opportunity to up the ante. If the law can be changed in deference to Muslim religious sentiments, what about Hindu religious sentiments? In a balancing act, the Rajiv government engineered the opening of the locks of the Babri Masjid in Ayodhya. Could it be, Mister Muslim, that in setting a dangerous precedent, we lost the "plot", not on November 9, 2019 but way back in 1986?

As the Babri Masjid-Ram Janmabhoomi agitation snowballed, thanks to the ulema's myopia, what should have remained a legal dispute over land turned into a dharam yudh between faiths, a conflict between Ram and Rahim. The militant "mandir wahin banayenge" war-cry of the "Ram Bhakts" was matched by the equally belligerent "once-a-mosque-always-a-mosque" posture of the Muslim leadership. It's a position that the All India Muslim Personal Law Board (AIMPLB) upholds even today. The leader of the All-India Majlis Ittehadul-Muslimeen (AIMIM), Asaduddin Owaisi, has recently reiterated: "A mosque belongs to Allah and no Muslim has any right to give or gift it away". In Islamic Saudi Arabia any number of mosques have been demolished or relocated for road widening and other public purposes. But in secular India, it's a different Islam.

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The escalation of communal conflict well suited the designs of the Sangh Parivar in convincing more and more Hindus that "Babar ki aulad" are preventing the building of a temple at the birth place of Lord Ram. From two seats in the Lok Sabha in 1984, the BJP's tally shot up to 85 seats in 1989 and 120 seats in 1991. This should have been a wake-up call for Muslims. But as riot after riot claimed more and more Muslim lives, the leadership remained blind to the reality that a state which failed to protect lives was unlikely to save a mosque.

Does anyone recall the statement of the late Atal Bihari Vajpayee a year or two before the demolition: "The mosque is sacred to Muslims, the spot is sacred to us Hindus as the janamsthan of Bhagwan Ram. I appeal to my Muslim brothers. We Hindus will respectfully lift the Babri Masjid brick by brick and re-build it at another spot. You let us build our Ram Mandir there." The Muslim response: A mosque does not mean four walls but the land on which it stands. In other words, it's not a question of law but a matter of faith.

Five months before the Babri masjid was demolished (December 1992), in an article published in the now defunct weekly *Sunday Observer*, yours truly had argued why in the interest of the minority community and the national interest, Muslims should unilaterally hand over the Babri Masjid, either to the president of the Indian republic or the Supreme Court. Let the chief custodians of secular India decide whatever they thought to be in the best interests of national unity and communal amity. The article reminded Muslims that the Places of Worship (Special Provisions) Act, 1991, offered statutory protection against any future agitations concerning all other mosques in the country. In response, I got a mouthful from even secular Hindu friends who asserted: "The Babri Masjid is not just a property of Muslims. It is a symbol of secular India. Who are you to gift it away?"

We, Mister Muslim, lost the opportunity for winning Hindu goodwill by our gesture, arresting if not reversing the rising tide of militant Hindutva and strengthening secular forces. The outcome: For Muslims, the loss of an estimated 3,000 lives since then in the recurring communal flare-ups; for Hindu nationalists, Ayodhya proved to be the chariot to ride to power.

Fast forward to November 9, 2019. Yes, the Supreme Court's verdict is disturbing. More disturbing is the fact that it was unanimous; not one of the five judges voiced a dissenting note. Even more disturbing, consider how it is that well before judgment day the Sangh Parivar had not the least doubt that the impending judgment would be in favour of Ram Mandir. How else does one understand their overnight switch from *mandir wahin banayenge* vow to an appeal to all Indians to "wholeheartedly support" the verdict, irrespective of which way it goes? Also, consider this: Most self-proclaimed secular parties are content with having expressed their respect for the verdict.

It's time we realised, Mister Muslim, that our clinging to the ulema's brand of Islam gives every conflict a Hindu-Muslim complexion when the ongoing battle is, in fact, between secular India and Hindu Rashtra. We mustn't become the convenient "other" for the Hindu nationalists to hide their real agenda.

The writer is convener, Indian Muslims for Secular Democracy and co-editor, Sabrang India online

NEHRU, RATIONAL SPIRITUALIST

For him, spirituality was rooted in Indian tradition and connected to ethics

PURUSHOTTAM AGRAWAL

JAWHARLAL NEHRU WAS a rationalist but he did not dismiss the human mind's spiritual quest. Being modern does not mean being unconcerned with or contemptuous of tradition and culture. It means identifying with the dynamism in tradition and accelerating its modernising tendencies.

A nuanced and essentially Indic understanding of the spiritual quest guided Nehru's endeavours in this respect. This understanding, achieved through reflection spread over millennia, came almost intuitively to a sophisticated Indian like Nehru, as it did to several ordinary people in his country. That is why Nehru could win the faith of countless Indians despite a sustained campaign against him for not being "culturally rooted and sufficiently Hindu/Indian". He never hid his aversion to "superstitious practices and dogmatic beliefs" and "uncritical credulousness" that often go with religion. But, he also knew that, "religion had supplied some deeply felt inner need of human nature, and the vast majority of people all over the world could not do without some form of religious belief. It had produced many fine types of men and women, as well as bigoted, narrow-minded, cruel tyrants."

Nehru felt "at home" in a "pantheistic atmosphere" and was attracted to "the advaita philosophy of Vedanta". In his own words, "I can appreciate to some extent the conception of monism, and I have been attracted towards the advaita (non-dualist) philosophy. The diversity and fullness of nature stir me and produce a harmony of the spirit, and I can imagine myself feeling at home in the old Indian or Greek pagan and pantheistic atmosphere, but minus the conception of God or gods that was attached to it." He further notes, "Some kind of ethical approach to life has a strong appeal for me, though it would be difficult for me to justify it logically. I have been attracted by Gandhiji's stress on right means."

The need to address the 'spiritual' was not merely personal for Nehru. Reflecting on the human condition, he noted in a conversation with R K Karanjia in 1960, 'the need to find some answer to the spiritual emptiness facing our technological civilisation'. He had realised quite early on, the deep interconnection between the poetic and the spiritual.

In the Hindu worldview, "ethics and conduct" are much more important than the acceptance of a particular doctrine. That is why Nehru, who always emphasised scientific temper, could win the love and confidence of not just ordinary people but religious scholars as well.

As first-hand received knowledge of the freedom struggle fades, misconceptions like Nehru was "ignorant" of Indian culture and had "contempt' for Hinduism have become widespread. In 2004, at a conference of scholars of Indian religions and cultures at Esalen institute, California, I was amazed to hear from a very respected scholar of philosophy and history that "the rise of Hindutva politics in India is due to the fact that Nehru suppressed religion, particularly its public display".

Any Indian brought up in "Nehru's India" would find this statement bizarre. Nehru and his colleagues, in continuation of Gandhi's idea that "every religion has some element of Truth", tried to evolve a state which sought to neither privilege nor suppress any religion — it sought to provide space to atheists as well. Even after Nehru's demise, when the word "secular" was inserted into the Preamble of the Constitution, through the 42nd amendment, care was taken to translate it in Hindi not as "dharma-nirpeksha' but "panth-nirpeksha" — because in several Indian languages, the term "dharma" stands not for a religious doctrine, dogma or faith system, but for the "inherent nature" of things, or for law.

The need to address the "spiritual" was not merely personal for Nehru. Reflecting on the human condition, he noted in a conversation with R K Karanjia in 1960, "the need to find some answer to the spiritual emptiness facing our technological civilisation". He had realised quite early on, the deep interconnection between the poetic and the spiritual. In 1922, while in prison, he read a lot of "religious" works. In a letter to Gandhi, Nehru insightfully described the *Ramcharitmanas* as "a spiritual autobiography" of the poet Tulsidas.

After Independence, Nehru was as insistent on having autonomous national institutions of letters, fine arts, music, drama and film as he was eager to have institutes of technology and nuclear reactors. The most important function of these initiatives in Nehru's vision was to address the "spiritual emptiness facing our technological civilisation". What he could not tolerate was using religion for political gains — communalism and the politics of hurt sentiments.

The recent Ayodhya verdict reflects a situation characterised by the helplessness of law instead of its rule, the reason being that the judiciary was expected to resolve a matter which though apparently legal, was essentially political. It is for us to think whether Nehru's insistence on running our polity "in accordance with political principles, not religious sentiments" has become more important with time.

Agrawal is a writer and historian. His latest book is Who is Bharat Mata?, *an edited collection on Nehru*


INDIAN EXPRESS

Railwaymen to get 15 days' wages as bonus

NOVEMBER 14, 1979, FORTY YEARS AGO

KURSI CASE

CHIEF JUSTICE, Y V CHANDRACHUD disclosed that he was warned by a Delhi lawyer, Y P Sharma against attending the court for the hearing of the *Kissa Kursi Ka* case. Sharma is president of the Delhi Lawyers' Association and is reportedly a worker of the Congress-I. The chief justice made the startling disclosure when he saw Sharma trying to intervene in a legal debate regarding the cancellation of Sanjay Gandhi's bail.

AWARD FOR MANDELA

THIS YEAR'S JAWAHARLAL Nehru Award for International Understanding has been given to Nelson R Mandela, the South African leader. M Hidayatullah, chairman of the seven-member jury for the award, announced this at a news conference. He said Mandela had been the "foremost South African leader in the struggle for the abolition of apartheid and the establishment of equality, freedom and independence in South Africa".

RAILWAYMENS' BONUS

THE LONG-DRAWN battle for bonus by railwaymen ended with the Union Cabinet agreeing to a productivity-linked bonus for them in lieu of payment of bonus under the Payment of Bonus Act. The first payment of this bonus will be made for the performance of the year 1979-80. As an earnest of accepting the concept of productivity-linked bonus, ad-hoc payment equal to 15 days' wages will be made to the 17 lakh railway employees during the current financial year.

BONUS GIMMICK

JANATA LEADERS TODAY termed as "electioneering gimmick" the caretaker government's decision on the railwaymen's demand for bonus. Piloo Mody quipped that it was an electioneering bonus. "It is a postdated cheque by a liquidating Prime Minister who is a short-time prime minister," Surendra Mohan said.

WHAT THE OTHERS SAY

"Western reports on Hong Kong affairs have made the Chinese people see clearly how these media outlets put their standpoint ahead of objectivity without regard for professional ethics." —GLOBAL TIMES, CHINA

Who's afraid of RCEP?

Dropping out protects Indian industry in the short run. But trade pact serves our long-term interests

NAUSHAD FORBES

C R Sasikumar

THE REGIONAL COMPREHENSIVE Economic Partnership (RCEP) brings together the 10 countries of ASEAN in South East Asia, along with Japan, South Korea, Australia, New Zealand, China and until last week — India. These 16 countries account for over a third of world GDP and trade, and are collectively growing at a rate that is double the rest of the world. The Indian economy is large, but the rest of the RCEP is eight times its size. It is by far the most attractive market in the world today, and will be for the next 20 years. But, after protracted negotiations that began in 2012, India announced last week that it is not pursuing membership in the RCEP. The 15 remaining RCEP members are going ahead and have committed to signing an agreement early next year. They have kept the door open for India, and India has responded with a mixed message about "staying out" while being open to "offers" to join in.

The world is full of various regional trade agreements (the World Trade Organisation recognises well over 400 RTAs). India is no exception: We already have RTAs with Sri Lanka, Bangladesh, ASEAN, Japan and South Korea, and were negotiating a trade agreement with Australia and New Zealand. Such trade agreements cover similar ground. All address the trade in goods, and often include some combination of trade in services, trade facilitation and classification, non-tariff barriers, intellectual property, competition policy, investment policy, and dispute resolution. The RCEP is ambitious in both scale (the 16 countries combined make up an economic area exceeding the European Union) and scope (going well beyond trade in goods).

Trade agreements involve balancing defensive interests and offensive interests between the access one provides to one's own market and the access one gets to the trading partner's market. But it goes further. Foreign competition can play a decisive role in forcing one's own firms to do a better job. As the Indian economy opened up post 1991, that is exactly what happened. Firms selling old designs and poor quality products were forced to improve or were pushed out of business. The Indian consumer benefited massively. But, so did the Indian producer. Imports soared after 1991. But, as firms rapidly became more competitive, exports soared too. India's share of world exports, which had fallen to 0.5 per cent in 1991, rose to 2 per cent by 2010. Foreign firms invested in India, and Indian firms invested abroad. Exports were a substantial driver of our growth performance, contributing roughly a quarter of our record 8 per cent growth between 2000 and 2010. The Indian economy integrated with the world.

The only countries among the 16 RCEP negotiators who do not have an RTA in play or one being negotiated between them are India and China. China is the big exception and the big fear. The contours of an agreement which provides less access for China and a longer adjustment period were already in place. For example, the RCEP covered 90 per cent of all traded items (tariff lines in trade negotiator jargon) for ASEAN, Japan and South Korea, but only 74 per cent of all traded items for China. For ASEAN, Japan and South Korea, most items had zero duty from now, but for China, a long adjustment period of 5, 10, 15, and 20 years was provided before we moved to zero duty. Finally, India had asked for a safeguard against a sudden surge in imports of any item from China. Although the details have not been made public, it would seem that China's refusal to accept this last demand contributed to India dropping out of the RCEP.

Some have said that India dropped out because of a need to protect the Indian farmer. This is surprising as almost all agricultural items, including milk, were in the excluded list. Dairy products were included. So was it the Indian food processing company, and not the Indian farmer that we sought to protect?

A perception exists across Indian industry that it has suffered as a result of our trade agreements. Instead, the facts show that they have had little impact. In 2000, before we signed any trade agreements, 17 per cent of our imports came from and 15 per cent of our exports went to countries we later signed trade agreements with. In 2018-19, 18 per cent of our imports and 18 per cent of our exports went to countries with trade agreements. Overall, a negligible impact. Instead, China, with whom we have no trade agreement, has seen the biggest jump — from 2.6 per cent of our imports in 2000 to 13.7 per cent last year. The fear of being flooded with imports from China led many sections of the Indian industry to argue strongly against the RCEP. Our decision to drop out of the RCEP reflects this desire to protect the short-run interests of Indian industry instead of the long-run interest of enabling it to compete with the world.

Trade patterns reflect underlying industrial competitiveness. It is no accident that we have seen the greatest growth over the last 20 years in our imports from China (up 54 times), South Korea (up 15 times) and Vietnam (up 65 times). These are among the world's most competitive countries and almost any country's trade balance has moved substantially in favour of these three. We might complain about non-tariff barriers and higher costs of doing business, but improving our competitiveness is the surest way of improving our trade balance.

India has two alternatives. The first is to avoid trade agreements, raise tariffs (as we have done in nine rounds in the last three years), believe that our firms cannot compete with the best, and protect the economy from imports. That is the approach which kept us, as firms, cosseted till 1991, and India poor. The second is to see in the world a huge opportunity to grow our market many times over, using trade agreements as a way of forcing our firms to compete with the best. And to equally force changes in all those things — the cost of logistics and shipping, power tariffs, the ease of doing business, and (especially) a competitive exchange rate — that can enable us to be more competitive. The RCEP gave us ample time: We should surely have the confidence that in the 5, 10, 15 or 20 year adjustment period that was provided we could improve our competitiveness enough to beat even the Chinese firms. This is the road we started down in 1991, and it has only benefited us. It is a road we must continue to take.

The message, then, is clear. A trade agreement, even a major one like RCEP is both an opportunity and a threat. It all depends on what one makes of them. Missing out on a market eight times the size of India's is closing off to the world we will regret for decades. We need to get back in before February.

The writer is co-chairman Forbes Marshall, former president CII, Chairman of Centre for Technology Innovation and Economic Research and Ananta Aspen Centre

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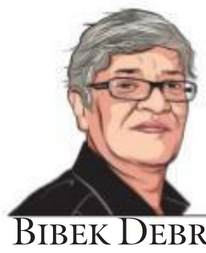
The speed of justice

Performance of fast-track courts has been mixed. The new special courts should take that record into account



BIBEK DEBROY

THE ELEVENTH FINANCE Commission's report was submitted in 2000 and its recommendations were for the period between 2000 and 2005. The report said, "We have observed that there is a pendency of about two crore cases in the district and subordinate courts of the states.We are providing a grant of Rs 502.90 crore for creation of additional courts specifically for the purpose of disposing of the long-pending cases... This will enable the states to create 1,734 new additional courts." This provision was based on an estimated cost of Rs 29 lakh for each additional court.

Though the Eleventh Finance Commission didn't use the expression, these 1,734 courts were fast track courts (FTCs). The state governments were supposed to establish FTCs after consulting the high courts. The term for the schemes recommended by the Finance Commission for FTCs ended on March 31, 2005. By that date, state governments had notified 1,711 FTCs, of which 1,562 were functional. The performance of these courts varied widely across states. The all-India average of cases disposed per month by a FTC was 15. Originally, the cases disposed per month was meant to be a per judge norm — and not a per FTC norm.

In *Brij Mohan Lal versus Union of India*, the Supreme Court instructed that one shouldn't disband FTCs overnight. Hence, the Union government approved Rs 509 crore for the 1,562 functional FTCs to continue till March 31, 2010; this deadline was extended by the year. In 2012, in the *Brij Mohan Lal* case again, the Supreme Court observed, "The Union of India has stated that it would not, in any case, finance expenditure of the FTC Scheme beyond 30th March, 2011 but some of the states have resolved to continue the FTC Scheme up to 2012, 2013 and even 2016. A few states are even considering the continuation of the FTC Scheme as a permanent feature... This, to a large extent, has created an anomaly in the administration of justice in the states and the entire country. Some of the states would continue with the FTC scheme while others have been forced to discontinue or close it because of non-availability of funds. Being a policy decision which has already taken effect, we decline to strike down the policy decision of the Union of India vide letter dated 14th September, 2010 not to finance the FTC Scheme beyond 31st March, 2011.The states which are in the process of taking a policy decision on whether or not to continue the FTC Scheme as a permanent feature of administration of justice in the respective States are free to take such a decision."

On balance, were the FTCs a good idea? That is tough to say. Their performance varied across states. Up to a maximum of Rs 80 crore per year, till 31st March 2015, the Centre provided a matching grant to states for the FTCs. Then along came the Fourteenth Finance Commission, for 2015-2020. There was a Rs 4,144 crore proposal for grants-in-aid from the Department of Justice to FTCs, in addition to grants for additional courts and family courts. On December 31, 2018, there were 699 FTCs (some of the courts that were established earlier had closed down). These were for cases against women, children, senior citizens, differently-abled, those with terminal ailments and civil property disputes that were more than five years old. The crime data for 2017 has been published recently. "Crime in India" has information on the IPC crimes tried by the FTCs. The SLL (special and local law) crimes are unlikely to be transferred to FTCs. But yes, those data does not include civil cases handled by FTCs. When will one think that a court is fast track? Probably, when a court disposes the case transferred to it within a year.

In 2017, FTCs in Jharkhand, Karnataka, Madhya Pradesh, Rajasthan and Tamil Nadu disposed off at least half their cases within one year. Chhattisgarh and Punjab missed the cut marginally. If the cut-off is changed from one year to three years, a few other states — Gujarat, Haryana, Telangana, West Bengal and Delhi — will not have poor records. However, the picture in some states is dismal. For example, FTCs in Bihar settled 6,704 cases in 2017. Two thousand five hundred and seven of these cases lasted more than 10 years and 1,655 cases took between five and 10 years. There is nothing "fast" about these courts. Between 2016 and 2017, some definitions and headings in "Crime in India" have changed. Therefore, a comparable table doesn't exist in last year's version. But trends aren't likely to be different.

There is now (2019) a scheme for fast track special courts (FTSCs) to adjudicate on rape and POCSO (Protection of Children against Sexual Offences) cases. "The 1,023 FTSCs will dispose of 166,882 cases of Rape and POCSO Act, that are pending trial in various courts.There are 389 districts in the country where the number of pending cases under POCSO Act exceeds 100. Therefore, as per the order of Hon'ble Apex Court, in each of these districts one exclusive POCSO court will be set up which will try no other cases. Depending upon the pendency of POCSO Cases the State/UT Governments in consultation with the High Court could however decide if more number of exclusive POCSO Courts need to be established within overall number of FTSCs provided under this scheme." The Centre will meet part of the expense of FTSCs with a matching grant by the State/UT — this scheme is till 2020-21. However, the incentive structure of judges presiding over FTCs has a lesson also for FTSCs.

The writer is chairman, Economic Advisory Council to the PM. Views are personal

Food for the future

We need a new Green Revolution — one that focuses on the environment

POONAM MAHAJAN

WHILE GROWING UP in a vegetarian family, I saw my mother face the big question for most non-meat eating families: How do we get adequate protein? Pulses, yes, but how do we get more? I know of several mothers who moved their children to meat-based diets only because they believed these were more protein-rich. Back then, there was little awareness on how plants can also be an adequate source of protein.

Do you know that one plate of butter chicken-rice costs us almost 3,000 litres of water? Rearing livestock and poultry for food and over-cultivation of water guzzling cash crops is impacting the environment. What India needs is a holistic approach to the issue — affordable nutrition and commercially profitable agriculture that are environmentally clean and leave minimum impact on natural resources.

The Collins Dictionary named "Climate Strike" the word of the year in 2019. Never before have we had so many strong voices across the world on climate change. The pressure on governments and policy makers is high. Policy discussions regularly feature the term "climate change" or "environmental impact". Even as governments are introducing policies that curtail pollution, companies are taking steps to reduce their carbon footprints. But industry isn't the biggest contributor to environmental pollution. The truth is that livestock — cows, sheep, chicken — and animal farming activity for food produce more pollution than all the planes and cars in the world combined. "Farming activity", which includes raising livestock, was dubbed the single largest contributor to pollution in Europe.

While nearly 70 per cent of the world is covered by water, only 2.5 per cent is fresh water. The rest is saline and ocean-based. Even then, just 1 per cent of our freshwater is easily accessible, with much of it trapped in glaciers and snowfields. In essence, only 0.007 per cent of the planet's water is available to fuel and feed its 6.8 billion people.

Water is a limited precious resource. Who knows this better than our famers who struggle with low ground water and inclement weather. This year, more than 54 lakh hectares of agricultural produce has been wiped out in Maharashtra because of unseasonal rains. This is aggravated by the fact that ground water has been depleting with most of India still using older forms of irrigation methods. At the onset of winter, Delhi gets engulfed in dense smoke with the burning of paddy stubs, another conventional farming practice that is impacting the environment.

Farmers need to be encouraged to choose crops wisely — India produces more than 120 million tons of rice a year with the government ensuring purchase with good MSP and incentives to grow the crop. On the flip side, paddy consumes between 3,000 to 5,000 litres of water to produce just 1 kg of rice. Other water-guzzling but cash-rich crops like rice, cotton, soybean, wheat and sugarcane need between 500 litres to 5,000 litres for 1 kg. On the other hand, crops like millets, lentils and pulses take half or less than half the amount of water for the same output. These are also rich sources of protein which makes them a sustainable alternative to water-intensive farming.

I recently spoke at a conference organised by the Good Food Institute called the 'future of protein'. The conference had two panels dedicated to plant-based proteins which can be produced through climate and farmer friendly crops such as ragi, amaranth and millets. These panels highlighted the importance of creating value chains and market linkages for these products. While the Green Revolution focused on rice and wheat, the need of the hour now is a new revolution — one that focuses on the environment, development and farmer welfare. With a focus on producing environmentally friendly crops, the next revolution can ensure that farmers are motivated to move to crops that consume less water, while ensuring their protection and a steady source of income.

There is an added bonus to the greater availability of crops that are kinder to the environment — cleaner eating habits. Being vegetarian is the best thing you can do to you body. Development, climate change and farmer welfare have to go hand in hand — they cannot and must not be looked at in silos. The Government of India, under the leadership of Narendra Modi, is putting emphasis on the National Nutrition Mission or the Poshan Abhiyan, which seeks to bring these three crucial issues together. It is imperative that we create policy solutions that balance these.

The best way forward is to work backwards from what's on your plate. As we stand at the brink of a new green revolution, cultivating plant-based protein sources like millets and legumes is our toolkit for an environmentally clean and sustainable agricultural movement.

The writer is national president, Bharatiya Janata Yuva Morcha and an MP

LETTERS TO THE EDITOR

ARBITRARY ACTS

THIS REFERS TO the editorial, 'Winning and losing' (IE, November 13). The Maharashtra governor has made a mockery of the constitutional process in recommending President's rule in the state. In the absence of any single party having majority, the governor should have called the single-largest pre-poll alliance, the BJP-Shiv Sena together, he should have then invited the second-largest alliance, the Congress and NCP. The governor invited individual parties to form the government. So why did he not call the Congress? Why the arbitrary allotment of time?

Sanjay Chopra, *Mohali*

CLEAN URBAN INDIA

THIS REFERS TO the article, 'Swachh Bharat for cities' (IE, November 13). The Swachh Bharat Mission's urban component needs to go beyond the construction of individual household toilets. A majority of the urban households are not connected to a central sewerage treatment system. Vacuum trucks and decentralised sewage treatment plants come at a dear cost. Local bodies must have the flexibility to improvise on their sewage management system.

Sudip Kumar Dey, *Kolkata*

REASSURE FIRST

THIS REFERS TO the editorial, 'A deeper dark' (IE, November 12). A number of reports have highlighted the poor state of the economy. Despite the country having unprecedented political stability, relatively better law and order, improved infrastructure and gains in the ease of doing of business ranking, the economy is in a slump. The government needs to rejuvenate the animal spirits and admit that it erred in demonetisation and implementing GST.

Deepak Singhal, *Chennai*

AFTER THE VERDICT

THIS REFERS TO the article, 'A breather, not a closure' (IE, November 11). The Supreme Court, while acknowledging that events of 1949 and 1992 were illegal, the court has ruled in favour of those who destroyed the Babri Masjid. This could give rise to two false perceptions. One, the Babri Masjid was built after demolishing a temple and two, the people involved in the destruction of the mosque were on the right path. Not everyone is going to read the fine print.

S Z A Hussain, *Delhi*

LETTER OF THE WEEK AWARD

To encourage quality reader intervention, The Indian Express offers the Letter of the Week award. The letter adjudged the best for the week is published every Saturday. Letters may be e-mailed to editpage@expressindia.com or sent to The Indian Express, B-1/B, Sector 10, Noida-UP 201301.

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If there are questions of current or contemporary relevance that you would like explained, please write to **explained@indianexpress.com**

SIMPLY PUT

What bringing CJI's office under RTI means

The matter reached the Supreme Court in 2010 when it petitioned itself against a Delhi High Court order. A look at how it unfolded.

SHYAMLAL YADAV
NEW DELHI, NOVEMBER 13

ON WEDNESDAY, the Supreme Court ruled that the office of the Chief Justice of India (CJI) is a public authority under the Right to Information (RTI) Act. A five-judge Constitution Bench headed by Chief Justice Ranjan Gogoi, and including Justices N V Ramana, D Y Chandrachud, Deepak Gupta, and Sanjiv Khanna, upheld a Delhi High Court ruling of 2010, and dismissed three appeals filed by the Secretary General and the Central Public Information Officer (CPIO) of the Supreme Court.

The issue before the court

The judgment pertained to three cases based on requests for information filed by Delhi-based RTI activist Subhash Agarwal, all of which eventually reached the Supreme Court. In one of these, Agarwal had asked whether all Supreme Court judges had declared their assets and liabilities to the CJI following a resolution passed in 1997. He had not requested for copies of the declarations.

While the CPIO of the Supreme Court said the office of the CJI was not a public authority under the RTI Act, the matter reached the Chief Information Commissioner (CIC) where a full Bench, headed by then CIC Wajahat Habibullah, on January 6, 2009 directed disclosure of information.

The Supreme Court approached the Delhi High Court against the CIC order. High Court Justice Ravindra Bhatt (who was later elevated as a Supreme Court judge) held on September 2, 2009 that "the office of the Chief Justice of India is a public authority under the RTI Act and is covered by its provisions". The Supreme Court then approached a larger Bench comprising then Chief Justice of Delhi High Court Ajit Prakash Shah, Justice Vikramjit Sen, and Justice S Muralidhar, which passed its judgment on January 13, 2010 holding that the judgment of Justice Bhatt was "both proper and valid and needs no interference".

SC plea to SC, about SC

The Supreme Court in 2010 petitioned itself challenging the Delhi High Court order. The matter was placed before a Division Bench, which decided that it should be heard by a Constitution Bench. As the setting up of the Constitution Bench remained pending, Agarwal filed another RTI application. The Supreme Court told him on June 2, 2011 that orders for constituting the Bench "are awaited". The Constitution Bench remained pending across the tenures of Chief Justices K G Balakrishnan, S H Kapadia, Altamas Kabir, P Sathasivam, R M Lodha, H L Dattu, T S Thakur, J S Khehar and Dipak Misra. CJI Gogoi last year constituted the Bench, which reserved its judgment on April 4 this year, and pronounced it on Wednesday.

While ruling that the office of the CJI is a public authority, the Supreme Court held that RTI cannot be used as a tool of surveillance and that judicial independence has to be kept in mind while dealing with transparency. While CJI Gogoi, Justice Gupta and Justice Khanna wrote one judgment, Justices Ramana and Chandrachud wrote separate verdicts.

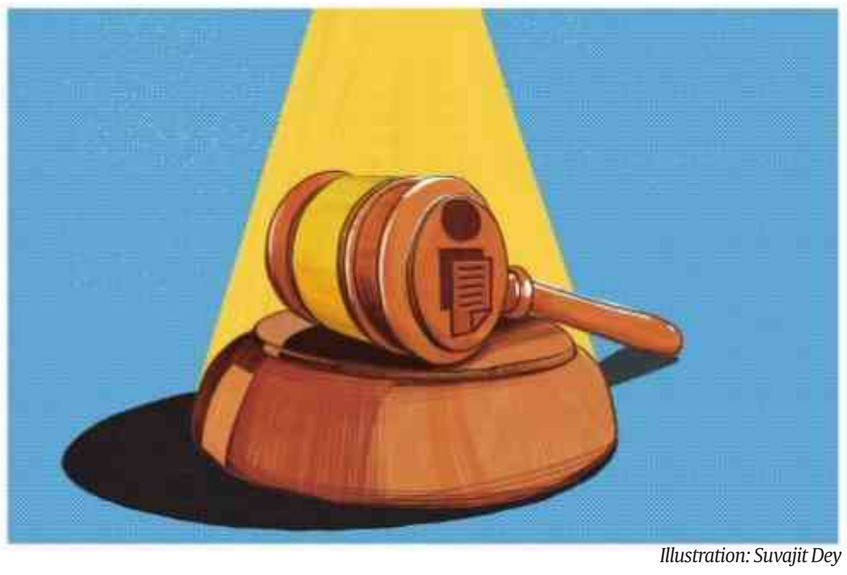

Illustration: Suvajit Dey

Justice Ramana noted that Right to Privacy is an important aspect and has to be balanced with transparency while deciding to give out information from the office of the Chief Justice of India. Justice Chandrachud wrote in his separate judgment that the judiciary cannot function in total insulation as judges enjoy a constitutional post and discharge public duty.

Two other matters

Of the other two RTIs filed by Agarwal, one was to request the Supreme Court for "copies of complete correspondence exchanged between concerned constitutional authorities with file notings relating to appointment of Justice H L Dattu, A K Ganguly and R M Lodha superseding seniority of Justice P Shah". The other request was for documents relating to a "revelation by Justice R Raghupati of Madras HC about some Union minister having approached him in some matter pending before the honorable judge in his court". These issues were stuck down; the matter the Supreme Court wanted to address was the question whether or not the office of the CJI is under the RTI Act.

What the order means

The outcome is that the office of the CJI will now entertain RTI applications. Under Section 2(f) of the RTI Act, information means "any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force".

Whether a public authority discloses the information sought or not, however, is a different matter. Offices such as those of the Prime Minister and the President too are public authorities under the RTI Act. But public authorities have often denied information quoting separate observations by the Supreme Court itself in 2011: "Officials need to furnish only such information which already exists and is held by the public authority and not collate or create information"; and, "the nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties".

On December 16, 2015 *(RBI versus Jayantilal N Mistry and Others)*, the Supreme Court noted: "It had long since come to our attention that the Public Information Officers under the guise of one of the exceptions given under Section 8 of RTI Act, have evaded the general public from getting their hands on the rightful information that they are entitled to."

CBI is still out of RTI

While the office of the CJI is now under the RTI's ambit, the CBI is exempt. When the UPA government brought the RTI law on October 12, 2005, the CBI was under it. The agency later moved for exemption, and this file was endorsed by Law Minister M Veerappa Moily of the UPA government itself. Incidentally, the Administrative Reforms Commission chaired by Moily had earlier recommended exemption of the armed forces from the RTI Act, but had not made such a recommendation for the CBI.

While the CBI demanded exemption only for units in intelligence gathering, exemption was granted in 2011 to the agency as a whole. The CBI, which is an agency that is often engaged in investigation of corruption cases, is today included in a list of exempted organisations in which most of the others are engaged in intelligence gathering. Litigation challenging the decision to exempt the CBI is pending with the Supreme Court; the next date of hearing, however, has not been fixed.

TELLING NUMBERS

Most women don't see politics as career, feel men get preference

A REPORT by Lokniti-CSDS and *Konrad Adenauer Stiftung* released Wednesday has looked at women and politics from multiple perspectives. The analysis was based mostly on the findings of a survey among women across the country, which assessed the perception of women on different dimensions of political participation and representation.

It found that socio-economic class also determines women's participation in electoral activities. Women belonging to the upper social (castes) and upper economic classes were found to be more active in electoral politics as compared to women placed at the bottom of the social and economic hierarchy *(Table 1)*.

The study found that women's participation as voters has seen a sharp increase over the years. Although the number of women candidates has increased, there still exists a wide gap. Only a little over one-fourth of the women respondents were keen to make a career in politics if given an opportunity *(Figure 1)*.

To a question that presented a situation where a man and a woman were equally good candidates, close to half the women respondents agreed that parties always prefer a male candidate while giving tickets. Only one-seventh of respondents disagreed and one in 10 had no opinion *(Figure 2)*.

The respondents were asked whether they agreed that "there is a lower possibility for a woman to win against a man, therefore women should not contest against men". Two in every five women disagreed with the statement *(Table 2)*.

Asked about barriers which they thought prevented them from taking part in politics, a little more than one-third of the women did not respond. Among those who responded, patriarchal norms/structure of the society were the biggest obstacles (more than a fifth of the women). The second reported reason (13%) was household responsibilities; the third "individual barriers". *(Table 3)*

TABLE-1
LEVEL OF ELECTORAL PARTICIPATION

	Not at all active	Somewhat active	Highly active
CASTE/COMMUNITIES			
Upper Caste	78	15	7
OBC	75	18	7
SC	81	14	5
ST	81	15	5
Muslims	70	22	8
Others	81	12	6
ECONOMIC CLASS			
Poor	83	13	4
Lower	78	16	6
Middle	74	19	7
Upper class	78	14	9

FIGURE-1
'Given an opportunity, will you make politics your career?'

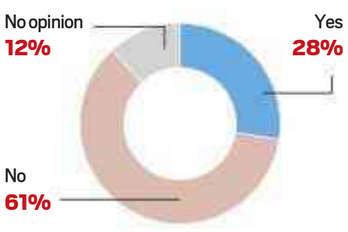

FIGURE-2
'When a man and woman are equally good candidates, parties prefer a man while giving tickets'

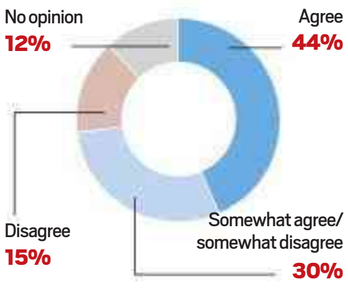

TABLE-2
'Lower chance of a woman winning against a man, so women should not contest against men'

Agree	17
Somewhat agree/somewhat disagree	31
Disagree	41

(Rest did not answer)

TABLE-3
Biggest obstacle that prevents women from participating in politics

Patriarchal structure	22%
Household responsibility	13%
Individual barriers	12%
Cultural norms	7%
Constraints related to finance or political structure	6%
Negative image of politics	3%
Other barriers	1%
No response	36%

Source: Lokniti-CSDS, Konrad Adenauer Stiftung

Rafale: Plea to rethink rejection of SC-guided probe into 36-jet deal

ANANTHAKRISHNAN G
NEW DELHI, NOVEMBER 13

Who filed the review petitions and why?

There were two review petitions — one by former Union Ministers Yashwant Sinha and Arun Shourie and advocate Prashant Bhushan, the other by Aam Aadmi Party Rajya Sabha member Sanjay Singh. They urged the Supreme Court to reconsider its December 14, 2018 verdict dismissing the prayer for a court-monitored investigation into the India-France deal for the purchase of 36 Rafale fighter aircraft. A three-judge Bench of the Supreme Court headed by Chief Justice of India Ranjan Gogoi and comprising Justices S K Kaul and K M Joseph, reserved its judgment on the review pleas on May 10.

What is the Rafale controversy about?

The opposition had alleged that the aircraft, built by Dassault Aviation of France, was purchased under a direct government-to-government agreement at a much higher price than the one negotiated for 126 aircraft by the UPA government under an open tender.

India's intention to buy the 36 aircraft in "fly-away" condition was announced by Prime Minister Narendra Modi during his visit to France in April 2015. A few days later, then Defence Minister Manohar Parrikar announced that the earlier deal for 126 jets — stalled over price since 2012 — was dead. The deal for the 36 aircraft — a new acquisition — was signed by Parrikar and his French counterpart Jean-Yves Le Drian on September 23, 2016.

The IAF had issued a tender for 126 Medium Multi-Role Combat Aircraft (MMRCA) in 2007, and at the end of a stringent selection process in 2012, Rafale was chosen.

What did the SC say in its December 14, 2018 judgment?

There were four petitions before the court — one each by lawyers M L Sharma and Vineet Dhanda, one by Sanjay Singh, and one by Sinha, Shourie, and Bhushan. The petitions questioned the decisionmaking process, pricing, and selection of offset partner.

Dismissing all the petitions, the Bench said it saw "no reason for any intervention... on the sensitive issue of purchase of 36 defence aircraft by the Indian Government", and that "perception of individuals cannot be the basis of a fishing and roving enquiry..., especially in such matters".

It rejected pleas for a court-monitored investigation into the deal, saying there was "no occasion to doubt the (decisionmaking) process" leading to the award of the contract, and there was nothing to show that the government had favoured anyone commercially.

The court refused to get into the question of pricing: "It is certainly not the job of this Court to carry out a comparison of the pricing details in matters like the present".

On the choice of Anil Ambani-owned Reliance Aerostructure Ltd as an offset partner by Dassault too, the court said: "Once again, it is neither appropriate nor within the experience of this Court to step into this arena of what is technically feasible or not."

The judgment pointed out that the Defence Procurement Policy (DPP) 2013 "envisages that the vendor/OEM (Original Equipment Manufacturer) will choose its own IOPs (Indian Offset Partners)", and that "in this process, the role of the Government is not envisaged...". It added that "we do not find any substantial material on record to show that this is a case of commercial favouritism to any party by the Indian Government, as the option to choose the IOP does not rest with the Indian Government."

On the decisionmaking process, the Bench ruled: "Broadly, the processes have been followed. The need for the aircraft is not in doubt. The quality of the aircraft is not in question. It is also a fact that the long negotiations for procurement of 126 MMRCAs have not produced any result, and merely conjecturing that the initial RFP could have resulted in a contract is of no use. The hard fact is that not only was the contract not coming forth but the negotiations had come practically to an end, resulting in a recall of the RFP."

It said: "We cannot sit in judgment over the wisdom of deciding to go in for purchase of 36 aircraft in place of 126. We cannot possibly compel the Government to go in for purchase of 126 aircraft."

What additional material did the review petitions present?

The petition by Sinha, Shourie, and Bhushan said the court had relied on "patently incorrect" claims made by the government in its note submitted in a sealed cover to the Bench that had heard the original petition. Also, additional information had emerged subsequently, and not considering it would result in a grave miscarriage of justice.

The petition relied on certain documents related to the deal which were published by *The Hindu* newspaper and later by the news agency ANI.

What did the Supreme Court say in its order of April 10, 2019?

The court rejected the government's objections to the admissibility of the documents sought to be relied on by the review petitioners.The government had taken the stand that these documents were unauthorisedly photocopied and leaked, and that they enjoyed protection under The Official Secrets Act, 1923.

The government sought their removal from the record of the case, saying they were of sensitive nature and, if they were made public, they could jeopardise national security.

Sabarimala: Challenge to order that opened temple to all women

APURVA VISHWANATH
NEW DELHI, NOVEMBER 13

What was the original verdict?

The Supreme Court had, in a 4-1 majority judgment delivered on September 28, 2018, thrown open the doors of the Sabarimala temple in Kerala to women of all ages, ruling that the practice of banning women of menstrual age from the temple was unconstitutional. Former Chief Justice of India Dipak Misra, and Justices A M Khanwilkar, Rohinton Nariman, and D Y Chandrachud wrote the majority opinion; Justice Indu Malhotra wrote the lone dissent.

2 REVIEW PETITIONS IN SC TODAY

REVIEW of an SC judgement can be sought only in case of a 'patent error of law', and when court may have reached a 'palpably wrong' conclusion — say, if a binding judgment of a larger Bench was ignored, or if a party was not heard, or if judgment was based on incorrect fact.

HEARD generally by the same Bench that had delivered the original verdict; in chambers of the judges. Order based on written submissions.

IN SABARIMALA, since former CJI Dipak Misra had retired, CJI Ranjan Gogoi heard review plea along with the four other judges who had delivered the Sept 2018 judgment. Request for open court hearings was allowed.

IF DISMISSED, only available option is to file a curative writ petition — a practice evolved by SC as the last legal resort to remedy a judgment.

The court ruled there was no "custom" that allowed the ban on menstruating women — and declared a Rule under The Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965, that allowed banning women when custom dictates it, as unconstitutional and in violation of the parent legislation.

The court said that the right to religion was guaranteed equally to all genders. Justice Chandrachud in his opinion radically held that barring women from the temple can be equated with untouchability, which is specifically outlawed by the Constitution.

Justice Malhotra, in her dissent, said that the temple enjoys a denominational status, and is entitled to form its own customs and practices. She also said that the ban on women of menstruating age did not amount to discrimination on the basis of sex.

On what grounds has the review been sought?

Following protests against the verdict, over 50 review petitions and fresh writ petitions were filed before the Supreme Court. The National Ayyappa Devotees (Women's) Association, the chief Tantri (priest) of the Sabarimala temple, the Nair Service Society, the All Kerala Brahmins' Association, and several women devotees were among those who sought a review. The Kerala Devaswom Board and Kerala government had opposed the review.

The grounds for review hinged essentially on two aspects — that the court did not capture correctly the arguments made by the parties and made an incorrect recording of facts, and that the devotees of Lord Ayyappa were not heard.

The review petitioners argued that the NGO Indian Young Lawyers' Association — the original petitioner who filed the public interest petition challenging the ban on the entry of women — had no standing before the court since it did not profess belief in the deity.

ESSENTIAL RELIGIOUS PRACTICE TEST: The Supreme Court held that the celibate nature of the deity Ayyappa and exclusion of women of menstruating age was not an essential religious practice. Previous Supreme Court rulings have held that a practice that is "essentially religious" is protected under law.

The review petitioners have argued that the court erred in holding that the custom is a "mere practice with some aberrations" and not an "essential religious practice", a position advanced by the Travancore Devaswom Board. The Tantri argued that the Board has no say in religious practices of the temple, and has been set up only to ensure its secular administration. According to the plea, the chief Tantri is the sole authority in the temple.

DEVASWOM BOARD AS STATE: The court held that the Board is considered state under Article 12 of the Constitution, and therefore the fundamental right to practice religion under Article 25(1) can be asserted against it.

The petitioners argue that this is an erroneous interpretation since the Board, if it is State, cannot interfere with the religious practices of the temple. "The court has not balanced the rights of the chief Tantri and devotees under Article 25 to preserve the traditions of the temple *vis-à-vis* the rights of the petitioners who have not professed faith in the deity," the plea argued.

BASIS OF THE BAN: The petitioners have argued that the court erroneously concluded that the ban is based on the age of women; in fact,it is based on the celibate nature of Ayyappa, which is distinct to Sabarimala.

"The reliance... that the restriction is based on menstruation is from an affidavit filed by the Tantri before the Kerala High Court that "spilling of blood" is prohibited inside the temple under tantric tradition," the petitioner said, arguing that the "spilling of blood" actually refers to any spilling of blood.

LOCUS OF THE NGO: The petitioners also argued that the devotees of Ayyappa were not heard by the court; rather, the verdict was delivered in a plea filed by an NGO that has not "professed belief in the deity".

The majority opinion of the court did not go into the standing of the original petitioner (the NGO) since the litigation had progressed significantly. However, Justice Malhotra, in her dissent, questioned the court's reluctance in dismissing the plea on the ground that the NGO had no standing before the court.

RELIGIOUS DENOMINATION: The court had held that the devotees of Ayyappa did not constitute a distinct religious denomination that is entitled to practise its unique customs.

The petitioners argued that the uniqueness of the Sabarimala temple and its history is enough to grant denominational status to Ayyappa devotees. "Spiritual organisation, a common bond and the existence of unique practices which flow from its beliefs, are the three conditions to grant denominational status to a group and devotees of Ayyappa fulfil all three," the petitioners argued.

In her dissent, Justice Malhotra had said that the Ayyapans constituted a separate religious denomination, and were entitled to follow their unique practices.