

Opinion

SUNDAY, JANUARY 19, 2020

JAMMU AND KASHMIR was closed down on the evening of August 4, 2019. The assault on human rights began that night. The new team that had taken over — the Governor, advisors, the Chief Secretary, the Director General of Police etc — had scant respect for the Constitution of India.



ACROSS THE AISLE
P Chidambaram

The law and the reality



Opposition leader Ghulam Nabi Azad and AICC general secretary Ambika Soni address the media in Jammu

Ms Anuradha Bhasin, Executive Editor of *Kashmir Times*, Mr Ghulam Nabi Azad, MP, and others challenged these restrictions in the Supreme Court. Apart from the contention that the fundamental rights of the petitioners had been breached, Ms Bhasin contended she was unable to publish her newspaper and freedom of press had been contravened.

On September 16, 2019, the Supreme Court ordered that the state government “*keeping in mind the national interest and internal security shall make all endeavours to ensure that normal life is restored in Kashmir*”. As feared, normal life was not restored. On October 10, 2019, the Court recorded the submission of the Central government that some restrictions “have been relaxed”. Effectively, however, there was no interim order that the Central and state governments were obliged to comply with, and the conditions in J&K, particularly in the Kashmir Valley, remained the same.

Issues and answers

The cases were heard on several days, judgment was reserved on November 27, 2019, and pronounced on January 10, 2020.

The Court had framed five issues. Let me give a snapshot of the issues and the answers given by the Court:

1. Can the government claim exemption from producing the orders under Section 144 CrPC?
Ans: NO
2. Are freedom of speech and freedom to carry on business over the Internet fundamental rights?
Ans: YES, under Article 19(1)(a) and (g), respectively, and every order suspending Internet shall be reviewed within 7 days (and periodically within 7 days of the previous review).
3. Is access to Internet a fundamental right?
Not answered.
4. Whether the restrictions under Section 144 were valid?
Ans: After stating that the power is preventive and remedial, that the order must balance the rights and restrictions based on the principle of proportionality and that repetitive orders cannot be passed, the Court directed the state/authorities “to review forthwith the need for continuance of the orders”.

5. Whether freedom of press was violated?
Ans: After examining the doctrine of “chilling effect”, and considering that the newspaper had resumed publication, the Court held “we do not deem it fit to indulge more in the issue than to state that responsible governments are required to respect the freedom of the press at all times”.

Striking a balance

The findings of the Court — and the reluctance to render findings on some issues — were not surprising. At the very beginning of the judgment, the Court had made its approach clear: “Our limited scope is to strike a balance between the liberty and security concerns... we are here only to ensure that citizens are provided all the rights and liberty to the highest extent in a given situation while ensuring security at the same time.”

During the period from August 4, 2019, to January 13, 2020, when the government was maintaining so-called ‘normalcy’, 20 civilians and 36 militants were killed and eight security personnel lost their lives.

As you read this column, restrictions continue on Internet, on movement, on public gatherings, on political activities, on speech and writing, and on visitors to the Valley. Political leaders continue to be in custody without charges. So, has anything really changed after the judgment?

Benjamin Franklin said “Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety”. The context was different; nevertheless that quote has become a classic whenever there is a conflict between liberty and security. Would the conclusions have been different if the Court had kept as its guiding principle the dictum of Benjamin Franklin?

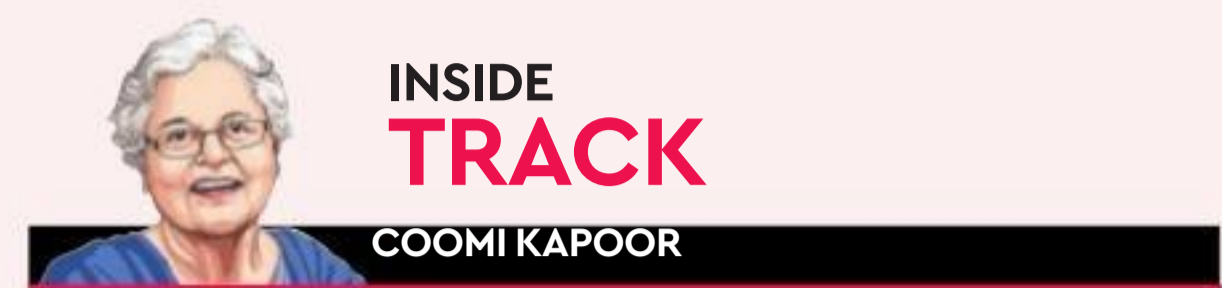
Will anything change?

The Court’s judgment gives the government a way to retreat from its authoritarian and militaristic approach to the Kashmir issue — but I doubt the government will take that route. The judgment also gives hope to the seven million people of the Kashmir Valley that their freedoms will be restored — although there is no sign yet of that happening seven days later.

The Respondents (Central and the Union Territory governments) are unhappy that their actions will constantly be subject to judicial review. The Petitioners are unhappy that they have got no real relief, only propositions of law.

More could have been done by the Court, as in the Privacy case (*Justice Puttaswamy*). An opportunity was lost. Maybe more will be done at the next hearing of the case (you bet there will be an action for contempt) or at the hearing of the next case. Sometimes, the law can disappoint.

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INSIDE TRACK
COOMI KAPOOR

Central hall out?

Parliament’s Central Hall is not simply the large hall where both Lok Sabha and Rajya Sabha members attend joint sessions twice annually. Through most of the year, it is a meeting place for MPs, past and present, and senior journalists to exchange notes over coffee, tea and snacks, between attending sessions in the House. For over half a century, Central Hall has served as a convenient neutral turf for government and opposition leaders and journalists to informally exchange news and views. That way the media gets a better understanding of the thinking of parties and government and vice versa. However, since the start of the Modi 2.0 government, there have been vague hints that the media might be barred from Central Hall. Speaker Om Birla assured a journalist that there was no such move. But a comment last week at *The Indian Express* Idea Exchange by Bimal Patel, the architect chosen to draw up plans for a restructure of the Central Vista, including Parliament, has set alarm bells ringing. Patel remarked that when he showed his blue print for the three halls of Parliament to Prime Minister Narendra Modi, he suggested that there was no need for the joint session hall. A hall for the Lok Sabha to accommodate a joint session, and another for the Rajya Sabha was sufficient.

Homeward outlook

In Modi 1.0, the powerful National Security Advisor Ajit Doval was perceived as encroaching on the turf of the Home and External Affairs Ministries. But in Modi 2.0, Doval does not pose any threat. The unquestioned power centre is the Home Ministry, where Amit Shah presides unchallenged. During the recent two-day tour of 15 foreign envoys to Kashmir, Doval, who initiated the visit, and the MEA officials who should normally have been in charge were overshadowed by the Home Ministry. The MEA is keen to counter international criticism over conditions in Kashmir, but Shah is not overly perturbed since he views such perceptions as fuelled by a lobby of habitual anti-India baiters. Even foreign envoys in India are conscious of the importance of Shah. Several senior diplomats have sought an appointment with the Home Minister. Shah has declined all requests. He agreed only to grant an appointment to the representative of a friendly island nation, since he felt the man was a kindred spirit. However, the MEA

advised against the meeting, since it would be perceived as a snub to other envoys.

Intelligent swipes

The cold vibes between Madhya Pradesh chief minister Kamal Nath and Congress Rajya Sabha MP Jairam Ramesh were evident at a recent book festival in Bhopal. Nath was chief guest and Ramesh was on the dais as the author of a book on Jawaharlal Nehru and V K Krishna Menon. Introducing Nath, Ramesh commented tongue-in-cheek that when he worked under Nath as Minister of State in the Commerce Ministry, Nath was so “super intelligent”, he didn’t feel the need to allocate any work to his junior. Nath retorted that Ramesh was so “super intellectual”, he didn’t need any mundane ministry work. While Nath was Ramesh’s boss in Manmohan Singh’s first government, later Ramesh became a Cabinet minister and exerted greater clout in the party because of his proximity to Rahul Gandhi.

Lock them up

Transport minister Nitin Gadkari does not hide his frustration with obstructionist bureaucrats. Infuriated with the slow pace of a file from the desk of a director-level officer to a joint secretary, additional secretary and secretary, the plain-speaking Gadkari threatened his officers that he would lock them all up in a room until they worked out a solution. Last week, at a road safety meeting in Delhi, Gadkari warned that “dead assets in government, who neither take decisions nor allow others to work, would be shown the door”. While such a drastic step may not yet be imminent, it is learnt that there is a proposal to reduce the retirement age of Central government officers from 60 years to either 55 or 58 years. An alternative suggestion is that no officer should be allowed more than 30 or 33 years of service.

Film scrapped

Before she passed away, the late Sushma Swaraj wanted to make a documentary on ‘A Day in the Life of an MEA Officer’. In the proposed feature, the articulate Swaraj was filmed expounding on what a job in the Foreign Office entailed. After Swaraj’s untimely death, it was decided that the focus of the film would be changed, the footage re-worked and some additional shots added so that it would be a fitting cinematic tribute to Swaraj. But strangely, the powers-that-be changed their minds and the documentary was simply scrapped.

Spare test cricket

The love for Test cricket has been unambiguous. Can resistance from stalwarts dilute the four-day Test contest?



RINGSIDE VIEW
Shamik Chakrabarty

ing its meeting in March, without the BCCI’s backing the plan runs the risk of falling flat.

Virender Sehwag was at his sarcastic best, as he rubbished the idea of four-day Tests while delivering the MAK Pataudi Memorial Lecture. “Chaar din ki chandni hoti hai, Test match nahi... Jal ki machli jal mein hi acchi hai, bahar nikaloge toh mar jaegi (the moon shines for four days, but not Test cricket. A fish out of water is a dead fish).” India captain Virat Kohli, too, was dismissive. “Look, I am not a fan. I think the intent will not be right then because then you will speak of three-day Tests, I mean where do you end? Then you will speak of Test cricket disappearing. I don’t endorse that at all.” Sachin Tendulkar has voiced his disapproval as well. “From a purist’s point of view and as an admirer of Test cricket, I don’t think it should be tinkered with. The format has to be played in the way it has been played for so many years.”

Following his Newlands heroics that helped England win the second Test against South Africa in the final session of the game, Ben Stokes, the world’s best all-rounder, threw his weight behind the traditional, five-day format. “It’s why five-day cricket should always be around. Games like these are unforgettable. We will remember it for a long time, so will South



Could four-day Test matches make for a better game or a financially convenient one?

Africa and it will go down as one of the greats,” Stokes had said at the post-match presentation.

On the face of it, the ICC wants to make four-day Tests mandatory from 2023 as a measure to create windows for its own events. The game’s global body has planned eight flagship events during the next eight-year rights cycle, starting 2023. Four-day Tests could free up a window in excess of 300 days during an eight-year cycle. The ICC can use the freed up space to incorporate its own events.

The ICC reportedly wants to make four-day Tests mandatory with an eye to dwindling stadium attendances and also the fact that more than 60% of matches over the past couple of years have finished inside four days. The excuses hardly hold water. You don’t take away the *aalaap* part from *maru-bihag* for example, because it’s slow and doesn’t have as many takers as

ruptors like T20s. They like the explosion of T20 tournaments,” the ICC General Manager (anti-corruption) Alex Marshall had said, when the global body hosted a media day at its headquarters in Dubai a couple of years ago.

Yes, Test cricket is expensive. Only the big three — India, England, Australia — have the financial wherewithal to afford it. As former England captain and the current England and Wales Cricket Board director of cricket Andrew Strauss told *The Guardian*: “We shouldn’t assume Test cricket is healthy just because it is popular in England. In lots of parts of the world, boards are struggling financially and Test cricket is not paying the bills.” This is one side of the story. At the same time, Test cricket becomes lucrative for smaller nations also, when they play against the big three. Besides, in 2017, the ICC approved four-day Tests and subsequently South Africa hosted one against Zimbabwe, while England played a four-day Test against Ireland last July. So subject to mutual consent, teams have the provision to play four-day Tests during bilateral series.

The ICC shouldn’t forget that it is an organisation of its members and not the other way round. It cannot impose anything on its member boards. From a cricketer’s point of view, four-day Tests could make spinners’ involvement peripheral. It could play a spoilsport to fifth day humdingers. The most memorable Test that India had played in the last two decades produced a result deep into the final session on day five — against Australia at Eden Gardens in 2001.