

The Resurgent India

A Monthly National Review

December 2023



“Let us all work for the Greatness of India.”

– The Mother

Year 14

Issue 9

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SUCCESSFUL FUTURE

(Full of Promise and Joyful Surprises)

Botanical name: Gaillardia Pulchella

Common name: Indian blanket, Blanket flower, Fire-wheels

Year 14

Issue 9

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A Declaration

We do not fight against any creed, any religion.

We do not fight against any form of government.

We do not fight against any social class.

We do not fight against any nation or civilisation.

We are fighting division, unconsciousness, ignorance, inertia and falsehood.

We are endeavouring to establish upon earth union, knowledge, consciousness, Truth, and we fight whatever opposes the advent of this new creation of Light, Peace, Truth and Love.

– The Mother

(Collected works of the Mother, Vol. 13, pp. 124-25)

JAMMU AND KASHMIR: VISIBLE WINDS OF CHANGE

A land historically associated with the great Shankaracharya and ascetic Shaivism, the journey followed by Kashmir represents the resilience of Indian nationalism in reclaiming a part of itself against many odds. A recent conclusive judgement by the country's highest court has brought the issue back to the fore and serves as a reminder of, both, the achievements of Indian nationalism as well as the multiplying challenges awaiting it at many turns.

In a landmark judgement delivered recently, the Supreme Court upheld the validity of the decision of the central government – taken on August 5th, 2019 – to revoke Article 370 which had accorded a special constitutional status to the former state of Jammu & Kashmir. In the process of its revocation, the Parliament had also downgraded J&K to the status of a Union Territory (UT) and separated Ladakh from it as a separate UT. The Court upheld all these decisions. The judgement is significant as it finally brings to a closure a slew of legal challenges confronting the Parliamentary decisions in 2019. It also reveals the rapid changes that have taken place in the region since 2019.

THE TRYST OF KASHMIR WITH TERRORISM AND ARTICLE 370: A HISTORICAL INJUSTICE

Kashmir was a princely state under the British rule, with majority Muslim population – thanks to centuries of Islamic invasions and conversions – ruled by a Hindu ruler, Maharaja Hari Singh. The constitutional status of princely states, at the

time of Independence in 1947, was different from the British India provinces. The princely states enjoyed a degree of internal autonomy and a certain guaranteed protection under the British suzerainty – an arrangement known as the subsidiary alliance system – in return for supporting the British rule in India by providing various forms of assistance. At the time of Independence, the majority of nearly 600 princely states were united with India through a mixture of methods employing power and diplomacy, except for some outliers like Junagarh, Hyderabad and Kashmir. Even as the other outliers were resolved, Kashmir has continued to be a festering issue for India since 1947. The main reason for this was the series constitutional changes – in the form of Article 370 – that kept the special status of Kashmir alive and prevented its full integration into the Indian Union.

The dispute began when, after the creation of Pakistan in 1947, Maharaja Hari Singh realized that his state would soon be overtaken by the incoming Pashtun hordes and Muslim tribesmen from Pakistan. India refused to come to his aid unless he signed the Instrument of Accession and acceded to India. The Instrument of Accession was finally signed on 26 October 1947, but not without travails. Domestically, the state had ceded only defence, foreign affairs and communications to India, with Lord Mountbatten diabolically attempting to make this accession provisional and insisting that the final decision on accession should be taken by the Constituent Assembly of J&K.

Internationally, Mountbatten prevailed upon Nehru to hold a plebiscite and refer the issue to United Nations Security Council (UNSC) in 1948. India had adopted a relatively weak approach at the UN, where Indian statesmen like Ayyangar

refused to directly condemn Pakistan, giving the impression that India was willing to bend backward to accommodate Pakistan. India's weak approach, in contrast to Pakistan's aggressive lobbying, ensured that India found itself backed into a corner time and again.

Further, at the UNSC, the British allied with Pakistan – and compelled the US to do so as well – arguing that since J&K had majority Muslim population, it should belong to Pakistan and that India should withdraw its forces from the Hindu majority Jammu as well. This was in direct contrast to the two key resolutions of the United Nations Commission for India and Pakistan (UNCIP) set-up in January 1948 after India's approach to the UNSC. The UNCIP procured evidence – from Pakistani leaders themselves – that Pakistani Army was guiding the raiding intruders in Kashmir. Therefore, in its resolution dated 13 August 1948, it set 3 conditions viz.,

- a. Declaration of ceasefire by both sides.
- b. Withdrawal of Pakistani troops and tribals from Kashmir, followed by withdrawal of troops by India.
- c. Holding of a plebiscite.

While the ceasefire was finally achieved by January 1949, the Pakistani refusal to withdraw its troops and proxies from Kashmir prevented the plebiscite from taking place there and then. Over time, as we know, Pakistan's occupation of Pakistan Occupied Kashmir (PoK) hardened and the resolutions to which India was party viz. of 1948 and 1949, were, for all practical purposes, confined to history.

Even as Kashmir became a bilateral dispute between India and Pakistan, with international ramifications, the domestic

situation in J&K also went on the path of deterioration. The cultivation of founder of National Conference (NC) party – Sheikh Abdullah – by Nehru in the initial years after Independence led to the rise of Muslim extremism and separatism in the Valley. Since Abdullah also wanted to expand his own political sphere of influence independent of both India and Pakistan, he painstakingly burnished his secular credentials until 1950. He was reluctant for Kashmir to go to Pakistan, since that would dent Kashmir’s future as well as his own prospects of independence, yet, even though he wanted Kashmir to remain with India, it should be in an autonomous position, so that only politicians of his ilk could rule, while India had no say and only ensured defence and money. Power and promotion of Islam being his mainstay, Abdullah was thus never averse to acting as an agent of either India or Pakistan, depending on what circumstances suited his and Kashmiri Muslim interests. Nehru realized this much later. But by then Abdullah extracted his cost in the form of Article 370 and the damage was done.

Article 370 was incorporated during the transitional period sometime between the date of signing of the Instrument of Accession and the drafting of the final Constitution of J&K by the Constituent Assembly of the state. The Article was included in Part XXI of the Indian Constitution under ‘Temporary, Transitional and Special Provisions’. The Article was included in October 1949 and became operational in 1952 once the Constitution of J&K was drafted.

Under the Article, all matters other than defence, foreign affairs and communications could be legislated in the context of J&K only, with the concurrence of the state government. Article 370 effectively ensured that none of the Indian laws

would apply to the state of J&K. *Worse, as was its main intention, by according the state 'special status', it gave permanent space to the free play of Muslim separatism and terrorism in Kashmir, by ensuring that the Indian state would never be able to change the Muslim demography of the state and would never be allowed to settle or give political rights to non-Kashmiris.*

It is no wonder that Dr. B.R Ambedkar refused to draft Article 370, and is cited as saying that:

Mr. Abdullah, you want that India should defend Kashmir. You wish India should protect your borders, she should build roads in your area, she should supply you food grains, and Kashmir should get equal status as India, but you don't want India and any citizen of India to have any rights in Kashmir and Government of India should have only limited powers. To give consent to this proposal would be a treacherous thing against the interests of India, and I, as the Law Minister of India, will never do. I cannot betray the interests of my country. (Naidu, 2019).

The refusal of Ambedkar to draft the Article resulted in Gopalaswamy Ayyangar drafting it instead. Ayyangar faced heat and extremely stormy protests from other Congress leaders. Article 370, by granting 'special status' to J&K, ensured that none of the laws of India could be made applicable to the state except by obtaining a prior consent of the constituent assembly of J&K. Indians from other parts of the country could not buy land or settle in the state, even though Kashmiris would be treated as equal citizens in the rest of the country. As per Article 35A, introduced through a Presidential Order in 1956, Indians could not buy immovable property in the state and Kashmiri women who married non-Kashmiris had their permanent residency certificate revoked. Indian citizens could

not vote in elections in J&K or get jobs in the state, and neither were any of the laws of the Indian Constitution applicable to the state except through Presidential Orders promulgated after obtaining the consent of the J&K government.

The extent of injustice perpetrated by this special status ensured the creation of an Islamist ghetto. The majority community of India which was a minority in Kashmir viz. Hindus were deprived of basic rights in a state that was supposed to be an integral part of India. The Hindu migrants driven out of West Pakistan in the early years after Partition and resettled in J&K have lived like refugees without rights in their own country, deprived of employment, right to vote, property and financial and other services.

Sheikh Abdullah left no stone unturned between 1949 and 1952, as the shape of the state constitution was being decided, to pass adverse proposals that soon put him at odds with Nehru and the Indian government. He continued to make inflammatory speeches, nursing Muslim chauvinism, which openly threatened Kashmir's accession to India. In fact, all his proposals – special permit to enter the state, post of Prime Minister for the state etc. – were aimed at nullifying the accession and ensuring more independence for J&K. In 1953, Nehru, through the Sadar-i-Riyasat (later, the post of Governor), Karan Singh, got Sheikh Abdullah detained and dismissed in a covert, well-planned overnight operation. This evoked a hysterical reaction in Pakistan, which felt that India had now started taking hold of Kashmir and bringing internal changes – a true guess since, after 1954, the Indian government has passed various laws, over the decades, to dilute Article 370. The final constitution of the state was drafted and signed in 1956, even as Sheikh Abdullah continued to be in detention, and came into force in 1957.

While Nehru, through his space lifetime subsequently adopted a firm approach towards Abdullah, this became diluted during the 1970s, as the Congress, under Indira Gandhi, decided to launch itself in Kashmir and signed the 1975 'Kashmir Accord' between Sheikh Abdullah and Indira Gandhi. Things were back in reverse gear and seeds of separatism strengthened, thanks to Abdullah's unabated communalism and open scorn for 'Hindu India.' With Abdullah back at helm, NC strengthened further, as did the anti-national elements, with cases withdrawn against certain hardcore terrorists and with Abdullah firmly launching his son, Farooq Abdullah, to take over the reins of the party and Kashmir politics. After Sheikh Abdullah's death in 1982, his son continued unabated his policy of encouraging separatism and hardline Muslim elements and fostering alienation from India. He even outstripped his father in his ardour for terrorists but faced setbacks due to his own limitations. During Farooq Abdullah's initial years, camps of Muslim and Khalistani terrorists, given refuge by him, were run in the Valley openly.

After 1986 and with Jagmohan as the governor of the state, Farooq Abdullah allied openly with pro-Pakistan elements and communalized the situation to a dangerous extent. He was forced to ally with Congress in the infamous and rigged 1987 elections. The phase after 1987 changed Kashmir completely. On the one hand, thanks to the antics of the Abdullah family, separatism, anti-India sentiments and Muslim radicalization had become firmly established since 1975. Between 1975 and 1989, Kashmiri youth used to go to jihadi training camps based in PoK to come back and attack India. The Afghan war which had raged from 1979 to 1989 also marked a new phase of power for Pakistan. The US and Pakistan had together created

the Taliban and nurtured jihad to oust the Soviet Union from Afghanistan. This not only brought Pakistan closer to US, ensured a lot of flow of money and gave it immense new power, but also made it possible for it to divert the freed jihadis from Afghanistan, in 1989, to Kashmir – with success. Congress, drunk with its own power and facing electoral weakening at the national level, was unable to act in national interest.

This phase officially marked the beginning of insurgency in Kashmir and the demand for a separate Ladakh due to Buddhist-Muslim tensions in Ladakh. Further, after 1989, Jammu and Kashmir Liberation Front (JKLF) and other separatist organizations, in the name of ‘azadi’, went onto commit a massive genocide against Kashmiri Pandits, leading to their mass exodus from the Valley. Mufti Mohammad Sayeed, as India’s Home Minister in 1989, released dreaded terrorists in exchange for his daughter who was abducted by JKLF. Kashmir remained under Governor’s rule for the large part of the 1990s decade, thankfully insulating it somewhat from the vagaries of India’s coalition politics that marked a tumultuous churning in Indian politics from 1989 onwards. Governor’s rule and imposition of Armed Forces Special Powers Act (AFSPA) ensured that militancy was crushed with a heavy hand, under Jagmohan, resulting in unconditional surrender of terrorists like Yasin Malik of JKLF and a split in JKLF’s Pakistan and India factions in 1995. Jagmohan was in his second stint as the Governor when militancy was dealt with a heavy hand.

Politically, during this phase, India was under siege from all sides. Politics was unstable due to the rise of the coalition era, while economy after being in dumps was in a period of transition. Terrorism in Kashmir and Punjab and in the north-

east was at its peak. Relations with Bangladesh, China and Myanmar were not good, while Pakistan was basking in the strength of its relationship with the US and the West, being at an all-time high. India's politics of appeasement and secularism could not have come at a worst time. Despite the nuclear tests of 1998 and the Kargil War of 1999, India continued to ignore its claim to be a power in its own right. Our government continued to unabatedly indulge Kashmiri terrorists and Pakistan, by seeking dialogue with them.

As we know, Pakistan has subsequently gone on to launch deadly terror attacks on the Indian soil, taking advantage of India's weak approach, both during Vajpayee and Manmohan Singh governments. During the UPA era, the peak of terror attacks came between 2005 and 2009 in mainstream Indian cities like Delhi, Varanasi, Mumbai etc. Even as the Congress-led government at the Centre harped on its newly manufactured discourse of so-called Hindu terrorism to whitewash Islamic terrorism, terror attacks had shifted their base from Kashmir to the heartland of India. These were the years when the sham of 'peace' was enacted by the Indian government in Kashmir. Separatists and terrorists received full indulgence from the then Indian government, as did Pakistan.

A NEW BEGINNING AND THE REVOCATION OF ARTICLE 370

It was only in 2014, with a change of government at the Centre, that this appeasement and the entrenchment of a temporary provision like Article 370 was challenged. Although revocation of Article 370 had formed a part of the Sangh Parivar ideological agenda and promise since 1950s, it was the Modi government which raised debate over this Article and

meticulously went about engineering the events leading up to its abrogation. The developments precipitating in the revocation of Article 370 were set in motion in 2018 when the BJP broke off its alliance with the People's Democratic Party (PDP) and imposed Governor's rule in the state. Under President's Rule, record number of terrorists were killed, including major terrorist commanders. The entire Hizbul Mujahideen leadership had been wiped out, while top leaders of other terror networks were dead. After Pulwama, India's airstrikes deep inside Pakistan in Balakot changed the Indo-Pak equation for good. At the same time, its direct fall-out was dealing a blow to the separatist mentality of Kashmiri Muslim leaders and their followers.

ENGINEERING THE REVOCATION OF ARTICLE 370

In early March 2019, when, unbeknownst to most observers, the government first tested the waters for abrogating Article 370. This was done using Article 370 (1) and the Presidential Order of 1951, wherein the central government could make applicable any of the laws or constitutional provisions of the Indian Constitution to the state of J&K with the consent of the state government. Since the state was under President's Rule, the Governor was recognized as the 'state government', without any legal hurdle. Thus, in a landmark move, in March 2019, SC/ST reservation in promotion was introduced in the state, as was the recent quota for Economically Weaker Sections (EWS).

In 2019, weeks before the revocation of Article 370, several prominent Kashmiri politicians, such as Abdullahs, Muftis, Lone and other prominent Kashmiri public figures were detained under house arrest. The government finally abrogated the

special status of the state under Article 370 and made J&K a Union Territory by passing a Reorganization Bill. Article 370 (1) (d) was used to abrogate the special provisions under Article 370 (3). Therefore, Article 370 was used to amend Article 370 itself and abrogate the special status. In 1953, Nehru had also clearly stated that this was a temporary provision that would be repealed. Unlike provisions and clauses under Article 371, which apply to north-east states and fall under a ‘special provision’, Article 370 of J&K was completely different viz. it fell under a ‘temporary provision.’

As per Article 370 (1) (d), other provisions of the Constitution can be made applicable to J&K with such “modifications as the President may by order specify”. For this, the consent of the state government had to be obtained. However, there was a legal catch in the form of Article 370 (3), which states that the President can issue a notification making the whole of Article 370 inoperative if such a recommendation is made to the President by the Constituent Assembly of J&K. Now, while there is an inbuilt provision for abrogating Article 370 within the Article itself, the problem was that the J&K Constituent Assembly ceased to function after 1957 without making any recommendation for abrogating this Article.

Article 370 was supposed to be temporary till the J&K Constitution was drafted, after which the Constituent Assembly should have secured its abrogation, as per the original intention. This was never done, and the assembly was dissolved in 1957. So, how does one abrogate the state’s special status? The unfinished work of constituent assembly till 1957 and inability of the President to amend Article 370 (3) has had the diabolical effect of giving a ‘temporary provision’ of Article 370 permanent practical effects for the last few decades.

The government overcame this hurdle by amending the interpretation clause of the Constitution viz. Article 367. The government added sub clause (4) (d) to Article 367, which now states that the term ‘Constituent Assembly’ in Article 370 (3) must be read as ‘Legislative Assembly’. Therefore, even though the President could not directly amend Article 370 (3), he did so indirectly by amending Article 367, which is used for interpreting how Article 370 can be read. The consent of the constituent assembly was, therefore, no longer needed, and due to the President’s Rule, the work of the legislative assembly was taken over by the Parliament.

THE PRESENT JUDGEMENT

The clutch of petitions before the Supreme Court which challenged the Central government revocation of Article 370 have now been settled by the Court by upholding the revocation to be valid. The Court passed its landmark judgement in a unanimous decision of a five judge Constitution bench, led by Chief Justice, DY Chandrachud.

First, the Court invalidated the petitioners’ argument that J&K continued to have an element of internal sovereignty even when it joined the Indian Union. The Court, upon examination of constitutional structure of the state, held that Section 3 of the Constitution of Jammu and Kashmir had declared that J&K is and shall be an integral part of India. Furthermore, Article 1 of the Indian Constitution, which declares India to be a Union of States, references J&K as part of the States. Therefore, the Court held that J&K has divested itself of any sovereignty when it signed the Instrument of Accession and joined India in 1947.

Second, contrary to the petitioners' argument that Article 370 had attained permanence and that after the dissolution of J&K assembly in 1957, no constitutional means existed to revoke Article 370, the Court held that Article 370 was always meant to be temporary, interim arrangement. Therefore, the dissolution of the state Constituent Assembly in 1957 does not impact the mechanism under Article 370 (3) through which the special status of J&K was revoked. The Court ruling stated that, "The power under Article 370 (3) did not cease to exist upon the dissolution of the Constituent Assembly of Jammu and Kashmir. When the Constituent Assembly was dissolved, only the transitional power recognized in the proviso to Article 370 (3) which empowered the Constituent Assembly to make its recommendations ceased to exist. It did not affect the power held by the President under Article 370 (3)."

Third, the petitioners also questioned the validity of revoking the special status and making such sweeping constitutional changes when the state was under President's Rule under Article 356. They argued that under Article 356, the President, while exercising his powers, cannot undertake decisions with irreversible consequences without the consent of the state legislature – such as repeal of special status, separation of Ladakh and conversion of the state into a UT. In response, the Court dismissed such arguments saying that challenging the exercise of President's powers on the ground of irreversible consequences would open the way for even challenging everyday administrative actions, which would, in effect, bring governance to a standstill.

The Court, however, held that exercise of Presidential power under Article 356 should have a reasonable nexus to the objective of Presidential Proclamation. In this regard, the bench

cited the 1994 Supreme Court ruling in the *S.R. Bommai v. Union of India* case, which defined the contours of President's Rule. Relying on the 1994 ruling by a nine-judge bench, the Court presently held that the standard to decide the validity of the President's action was to see whether it was not "mala fide or palpably irrational", or that the "advisability and necessity of the action was not borne in mind by the President."

Fourth, the Court held that carving out Ladakh as a separate UT was valid, as the Parliament could exercise such power under Article 3 of the Constitution, which empowers it to create new states or change the boundaries of existing states without being bound by the views of the states themselves. On the question of the status of J&K as a UT, the Court did not go into it, as the Centre had promised to restore it to full statehood. The Court merely said that this should be done expeditiously, and also told the Centre that measures should be taken to hold elections in the UT by September 30th, 2024.

CHANGING CONTOURS OF JAMMU AND KASHMIR

More than the legalities and constitutional technicalities through which the revocation of Article 370 was upheld, the actual significance of the judgement lies in the fact that it is in sync with the positive changes that have taken place in the Valley since 2019. Key among those changes is the decline of terrorism and stone-pelting incidents in the Valley. There is also a loss of support for terrorists among the locals and an increased support for the government. Sympathy for Pakistan has also soured. The following are indicators of changing security situation in the Valley (Majid, 2023):

First, as per official estimates, while 124 civilians were killed at the hands security forces during protests and stone-pelting incidents between August 2016 and August 2019, not a single such incident was reported in the last four years.

Second, while 35 militants were killed in various operations by the security forces from January to August in 2023, the number was over 120 in the same period last year. In 2022, 186 militants, including 56 foreigners, were killed by the security forces.

Third, several infiltration attempts have been foiled and not more than 12 locals have joined militancy till mid-2023. This has brought down the number of active militants to double digit.

Fourth, investment projects worth nearly Rs 25 thousand crore are under execution in J&K while proposals to the tune of over Rs 80 thousand crores are under process. Since Independence, J&K had received private investments to the tune of Rs 14,000 crore only. However, after the abrogation of Article 370 and the introduction of new Industrial Development Scheme, J&K has received investment proposals worth more than Rs 80,000 crore in the last two years alone.

Fifth, the political situation at the level of people has witnessed sea changes. The Scheduled Tribe community has got political reservation and even been elected to local bodies like District Developmental Councils. Dalits and OBCs have similarly been empowered. Further, more than 60,000 refugees from West Pakistan as well as Gorkhas have also secured their rights and domicile.

All these huge changes, which would have seemed unimaginable before 2019, have occurred rapidly ever since

the Indian laws were fully made applicable to J&K. *The most significant aspect of these changes has been the psychological optimism that has displaced the dread, violence and terrorism of the last few decades. The earlier governments, particularly the UPA and the erstwhile NDA (during 1999-2004) had followed an approach that had mostly led to the alienation of the locals and the encouragement of terrorists.* Both Manmohan Singh and Vajpayee governments had sought to cultivate militant leadership such as those of Hurriyat and had sought to resolve the Kashmir issue in dialogue with Pakistan. This had given legitimacy to these militant-terrorist outfits and to the rouge Pakistani state. At the same time, the perception of the locals was that of human rights excesses by the security forces and local sympathy for terrorist elements. It seems that the so-called hearts-and-mind approach was reserved more for the terrorists and less for the people.

In contrast, the Modi government has eliminated the separatist leadership from the scene. Not only has the government refused to talk to these separatists and to Pakistan but has also adopted a military approach in settling Pakistan and imprisoned major separatist leaders. Indeed, recent times have even witnessed mysterious record killing of terrorists inside Pakistan itself – terrorists whom India had designated as such. Supplementing this hard approach towards terrorism, the government has, through its efforts, local outreach and programmes, created goodwill among the people. The days of routine protests are now over and the reports of human rights excesses have become rare. Any instance of human rights excess is now rare and thoroughly taken seriously by the government, such as the recent incident in Pir Panjal.

Even as there is overall improvement in the environment, challenges will continue to abound. Instances of terror attacks on security forces are a challenge to which the Indian state is constantly receptive. The recent spate of attacks shows that peace in the Valley has been accompanied by a shifting of terror loci from Kashmir to Muslim-majority Pir Panjal region of Jammu, particularly Rajouri and Poonch, where 40 soldiers have been killed since 2020. Another challenge is the use of Artificial Intelligence (AI) technology by terrorists, through the use of drones, hard-to-trace YSMS technology, SIM-less phone activation and other techniques of hybrid warfare.¹ It has become difficult for the security forces to trace many of these attacks even though terrorists have made videos of them using body cameras.

CONCLUSION

Despite this plethora of opportunities and increasing challenges facing J&K, there is an abiding certainty that the country is moving in a sound direction. Despite the best efforts of certain governments to securitize, mechanicalize and alienate the Kashmir issue from larger national questions, this issue has had a significant impact upon the psychology of the nation and has been instrumental in consolidating our national consciousness. Its successful movement towards settlement also represents the growing Indian position in world affairs. The Kashmir issue represents the microcosm of the journey

¹ YSMS is communication via VHF (very high frequency) with the help of a smartphone. Terrorists use phones without SIMs and pair them to radio sets to relay messages, SOS appeals and even the precise location to other paired devices using line-of-sight. Since there isn't a mobile network involved, it is difficult for intelligence agencies to intercept these communications and track them down.

of the Indian nation from the communal Partition of the subcontinent by the British in a bid to weaken a newly independent India – in this journey Kashmir played a significant role – to the successful sweep of Indian nationalism in reclaiming its strength and vitality.

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ASSEMBLY ELECTIONS RESULTS: A DECISIVE CHANGE

The recently held state assembly elections in five states have yielded results that indicate the firmly changing political equations across the country. The results have yielded a decisive victory of the Bhartiya Janata Party (BJP) across three critical states, while the Indian National Congress (INC) won a state in the south displacing a powerful regional party. In the northeastern state of Mizoram, a new outfit won the elections, raising positive hopes about changes in the negativity surrounding the recent role of the state with respect to national security issues. The elections not only come as a positive harbinger for the BJP ahead of the Lok Sabha elections scheduled in 2024, but also indicate that national sentiment, driven by awareness among people, can no longer be manipulated by petty politics of selfishness.

SIGNIFICANT OUTCOMES IN THE ASSEMBLY ELECTIONS

The assembly elections yielded victories for the BJP in the three states of Rajasthan, Madhya Pradesh, and Chhattisgarh. These were the states which saw a clear two-party contest between the Congress and the BJP. In the southern state of Telangana, the Congress was led by the dynamic young leader, Revanth Reddy, who had incidentally started his political career as a member of the student wing of BJP viz. Akhil Bhartiya Vidyarthi Parishad (ABVP). The Congress surprisingly and firmly displaced the powerful incumbent regional party, Bhartiya Rashtra Samiti (BRS) which was led by K. Chandrashekhara Rao (KCR). In Mizoram, it was the Zoram Peoples Movement

(ZPM) which snatched the victory, successfully displacing the powerful incumbent, Mizo National Front (MNF) which was led by former Chief Minister, Mr. Zoramthanga.

Madhya Pradesh:

In Madhya Pradesh, the BJP, defying all exit poll predictions of a close contest, secured its highest ever vote-share in the state and a super-majority of seat share as well.

Overall vote and seat share:

	Seats share		Vote share (%)	
	2023	Change from 2018	2023	Change from 2018
BJP	163	+54	48.6	+7.5
INC	66	-48	40.4	-0.5
Others	1	-6	11	-7

Source: (Nihalani, Varghese, Loganathan, & Radhakrishnan, 2023)

Vote-share in reserved seats

	General (%)		Scheduled Caste (SC) (%)		Scheduled Tribe (ST) (%)	
	2023	Change from 2018	2023	Change from 2018	2023	Change from 2018
BJP	48.8	+7.3	51.2	+9.1	46	+7.1
INC	39.6	-0.2	40.2	-2.3	42.9	-0.1

Source: (Nihalani, Varghese, Loganathan, & Radhakrishnan, 2023)

It is evident from the category-wise vote share distribution that the BJP has gained vote-share across all categories – unreserved, SC and ST – while the Congress has seen a marginal drop in its vote-share across all categories. This is significant as it exposes the limitations of the caste-based polarization agenda of the Opposition.

Region-wise vote share:

	BJP (%)		INC (%)	
	2023	Change from 2018	2023	Change from 2018
Bundelkhand	48.1	+9.8	37.9	+3.3
Chambal	44.3	+9.7	41.1	-1.1
Madhya Bharat	53.9	+7.7	40.8	-2.8
Mahakoushal	47.1	+7.0	42.8	+0.7
Malwa North	52.1	+5.4	38.8	-4.2
Malwa Tribal-Nimar	46.9	+6.8	45.2	+0.9
Vindhya	45.4	+7.4	35.0	+2.2

Source: (Nihalani, Varghese, Loganathan, & Radhakrishnan, 2023)

In terms of region-wise vote share, it is evident that BJP has outperformed the Congress across all regions, although in Malwa Tribal-Nimar the difference between them is not much. The Congress has improved its vote share in Bundelkhand and to a lesser extent in Vidhya region. On the other hand, BJP has seen significant improvement in vote share across all regions.

Even in terms of urban-rural divide, the BJP has outperformed the Congress across urban, semi-urban and rural areas. In urban areas, the vote share of BJP was 56%, while that of Congress was 41.1%. In semi-urban geography, the vote share of BJP was 48.4% while that of Congress was 38.1%. Finally, in rural areas, the vote share of BJP was 47.5% while that of Congress was 41.3%. In rural areas, both BJP and Congress improved their vote share over 2018 result – the BJP by 7.5%, while Congress by 1.4%. Across all other geographies, the BJP improved its vote share while the Congress marginally reduced its own.

Caste / community-wise vote shares:

	INC (%)	BJP (%)
Upper caste	21	74
OBCs	35	55
Dalits	45	33
Adivasis	51	39
Muslims	85	8

Source: Lokniti-CSDS post-poll survey

In contrast to Congress-ruled states, in MP, which was assumed to have a factor of anti-incumbency, the people were satisfied with the performance of central as well as the state government. Charges of corruption and misgovernance that had plagued the incumbent governments in Chhattisgarh, Rajasthan and Telangana were missing here. Similarly, the number of people genuinely benefiting from the state welfare schemes was high and these voted for the BJP. This, combined with astute political organization and the appeal of Mr. Modi, helped the BJP to take on the combative Congress.

Rajasthan:

The BJP victory in the state of Rajasthan was yet another significant milestone. Here again, despite the confidence of Congress, boosted by the media bubble and exit poll indications, the election was not even close, with the BJP winning a decisive majority.

Overall vote and seat share:

	Seats share		Vote share (%)	
	2023	Change from from 2018	2023	Change from 2018
BJP	115	+42	41.7	+2.9
INC+	70	-31	39.7	+0.1
Others	14	-12	18.6	-3.0

Source: (Nihalani, Varghese, Loganathan, & Radhakrishnan, 2023)

Vote share in reserved seats:

	General (%)		SC (%)		ST (%)	
	2023	Change from 2018	2023	Change from 2018	2023	Change from 2018
BJP	41.8	+3.2	43.5	+4.0	38.5	-0.2
INC	40.1	+0.9	41.3	+0.2	35.4	-4.3

In Rajasthan, the vote shares of the two parties are relatively closer. Across all social categories – unreserved, SC and ST – BJP is marginally ahead of the Congress. In terms of ST vote

share, both the parties have lost some percent of vote compared to 2018, but the loss of Congress has been more significant compared to the minor loss of the BJP.

Vote share across regions:

	BJP (%)		INC (%)	
	2023	Change from 2018	2023	Change from 2018
Central	45.7	+5.9	41.6	-0.1
Haroti	46.6	+0.3	42.4	-3.7
Matsya	39.9	+7.1	41.9	+2.5
North	39.2	+2.9	39.9	+0.7
South	40.2	-2.2	34.9	-2.3
West	41.2	+3.2	39.6	+1.7

Source: Lokniti-CSDS post-poll survey

From the vote share distribution in the state, it is evident that there is not much difference between the two parties, even across the region-wise spread. Both the parties have lost marginally their vote-shares in the South. Across all other regions, BJP has made gains. The BJP gains in the Central and Matsya region have been particularly significant. The Congress has marginally more vote share than the BJP in the Matsya and North regions.

In terms of rural-urban divide, the vote share of BJP (53.2%) is significantly greater than that of Congress (43.4%) in the urban region. In the rural region, the two parties are more or less at the same level, with the BJP (40.3%) only marginally ahead of the Congress (39.7%).

Caste / community-wise vote share:

	INC (%)	BJP (%)
Upper caste	32	61
OBC	33	45
Dalit	48	33
Adivasi	35	30
Muslims	90	5
Others	23	40

Source: Lokniti-CSDS post-poll survey

The BJP has been ahead of the Congress among nearly all caste groups except the Dalits. Congress also completely swept the Muslim vote-bank.

In Rajasthan, there was an overall perception of increase in corruption under the former Gehlot government. Other factors included rise in crimes against women as well as the increase in support for the BJP during the campaigning phase, especially due to the Modi factor. Caste census and the mobilization strategy of the Congress through the Bharat Jodo Yatra turned out to be damp squibs. The BJP was also able to mobilize support from young voters aged below 25 years. Further, the educated classes voted for the BJP in double the numbers compared to the Congress.

Chhattisgarh:

In Chhattisgarh, the BJP won comfortably, despite the contrary predictions of exit polls and the false hype created by the mainstream media. Due to the corrupt governance of

the Congress-led Baghel government, the BJP outperformed the Congress across all regions and categories. It was ahead of the Congress in rural seats, urban seats, farmer-dominated regions and ST seats.

Overall seat share and vote share:

	Seat share		Vote share (%)	
	2023	Change from 2018	2023	Change from 2018
BJP	54	+39	46.3	+13.3
INC	35	-33	42.2	-0.8
Others	1	-6	11.5	-12.5

It is evident that while the vote share of the Congress has generally remained intact, the BJP has significantly increased its vote share by 13.3% over the 2018 result.

Vote share across reserved seats:

	General (%)		SC (%)		ST (%)	
	2023	Change from 2018	2023	Change from 2018	2023	Change from 2018
BJP	48.7	+14.8	42.0	+12	43.3	+11
INC	41.6	+0.2	45.9	+0.8	41.7	-3.4

It is evident that BJP has made double-digit gains in vote share across all categories. However, BJP vote share in SC category continues to be behind the Congress, even though the former gained 12 percent vote share in these elections. BJP also swept the tribal seats, while the Congress saw a decline in its tribal vote share.

In terms of rural-urban divide, the BJP (57.5%) vastly outperformed the Congress (35.3%) in urban seats. In rural seats, the BJP (44.1%) was again ahead of the Congress (41.7%), although not by such a vast margin.

Caste / community-wise vote share:

	INC (%)	BJP (%)
Upper caste	39	54
OBC	39	49
Dalit	48	39
Adivasi	42	46
Muslims	53	27

Source: Lokniti-CSDS post-poll survey

In Chhattisgarh, the incumbent Congress government was plagued by allegation of corruption and misgovernance. The BJP further had an advantage across most of the demographics as well as social groups.

Telangana:

The victory of the Congress in Telangana came from the large number of seats the party managed to wrest from the BRS. Of the 65 seats won by the Congress, 47 seats were wrested from BRS, while it held onto 14 seats. Significantly, the BRS – despite a number of schemes put in place by KCR – lost in farmer-dominated seats and in rural regions, while it gained only in urban seats. The BJP also made significant inroads into the state, increasing its vote share by 7% over the 2018 election and its seat share from 1 to 8 seats. Asaduddin Owaisi-led AIMIM continues to be a marginal player, but has managed

to thoroughly monopolize the Muslim vote, with nearly all the Muslim candidates of the BRS and the INC losing.

Overall vote share and seat share:

	Seat share		Vote share (%)	
	2023	Change from 2018	2023	Change from 2018
INC+	65	+46	39.7	+10.9
BRS	39	-49	37.4	-9.5
AIMIM	7	0	2.1	-0.6
BJP+	8	+7	14.2	+7.2
Others	0	-4	6.6	-8.0

In terms of overall vote and seat share, it is evident that Congress has gained majority of its vote and seat share from the loss of BRS, while BJP has managed to carve out a niche voter base of its own in the state.

Vote share in reserved seats:

	General (%)		SC (%)		ST (%)	
	2023	Change from 2018	2023	Change from 2018	2023	Change from 2018
INC+	36.8	+9.4	48.9	+17.6	48.3	+12.3
BRS	37.2	-9.8	39.0	-10.7	36.2	-5.4
AIMIM	2.9	-0.8	0	0	0	0
BJP+	16.6	+8.3	6.5	+2.9	7.6	+4.4

Source: Lokniti-CSDS post-poll survey

It is evident that the Congress has won handsomely among the SC and ST categories, far outperforming the BRS. Incidentally, the AIMIM did not make any gains among the reserved categories. BJP improved its vote share among all categories, especially the general category.

Strike Rate of Muslim Candidates:

	Muslim candidates	Win %
BRS	3	0
INC	6	0
AIMIM	8	87.5

Source: Lokniti-CSDS post-poll survey

The data shows that all Muslim candidates of BRS and INC lost the elections, while from AIMIM only one Muslim candidate lost. This may come as a reality check on the politics of appeasement often practiced by parties like BRS and INC. The AIMIM was successful in stealing away the religious plot from BRS, despite best efforts by BRS to appease the minority community through various policies and schemes.

Vote share across regions:

	INC+ (%)		BRS (%)		AIMIM (%)		BJP (%)	
	2023	Change from 2018	2023	Change from 2018	2023	Change from 2018	2023	Change from 2018
Hyderabad	25.2	+9.3	39.1	-1.3	9.8	-2.7	21.7	+8.3
North	41.8	+10.5	34.6	-12.4	0	0	16.0	+10.4
South	45.9	+12.4	39.3	-11.1	0	0	7.8	+3.0

Source: Lokniti-CSDS post-poll survey

From the regional vote share, Congress and BJP made gains across all regions, while BRS lost out across regions. Interestingly, the BJP made impressive gains in the North, although it has the highest vote share in Hyderabad at nearly 22%.

Vote share across rural-urban divide:

	Urban (%)	Rural (%)
INC+	15.6	45.6
BRS	24.0	37.0
AIMIM	31.2	0
BJP	22.5	10.0

Source: Lokniti-CSDS post-poll survey

In terms of rural-urban divide, while AIMIM dominates the urban vote share, Congress dominates the rural spectrum. Interestingly, AIMIM has no traction in rural areas.

Vote share according to caste and community:

	INC (%)	BRS (%)	BJP (%)
Reddy	49	34	11
Other upper castes	31	37	26
Yadava, Golla, Kuruma	51	33	12
Mudiraj, Mutraju, Tenugollu	41	44	14
Gowda, Gavalla	49	37	13
Other OBC	36	37	18
Dalit	38	41	8
Lambadi	52	40	4
Other ST	38	48	9
Muslims	32	35	2

Source: Lokniti-CSDS post-poll survey

The caste and community vote shares indicate that Congress has managed to corner the dominant Reddy vote share, as well as Yadavs and a segment of STs. The BRS did well among non-Reddy upper caste and the SCs. The BJP also won one-fourth of non-Reddy upper caste votes.

Mizoram:

In Mizoram, a new political outfit – the Zoram Peoples Movement (ZPM) – comfortably won the election by bagging 27 seats in the 40-member assembly.

Party	Seats won	Vote share (%)
ZPM	27	37.9
Mizo National Front (MNF)	10	35.1
BJP	2	5.1
INC	1	20.8

The elections saw the defeat of MNF – an ally of the BJP. The ZPM was led by Mr. Lalduhoma – a former IPS officer who was in-charge of security of former PM Indira Gandhi in 1982. The outgoing Chief Minister, Mr. Zoramthanga, even lost from his seat by 2100 votes to a newcomer, and all the 10 seats won by the MNF were also won with very slender margins. It is notable that Mr. Zoramthanga lost despite his aggressive stance against the Meiteis of Manipur, and his encouragement of giving refuge to displaced Kuki-Chin tribes fleeing Manipur as well as Myanmar, thereby leading to significant refuge influx across Indian borders.

The victory of a new party in Mizoram is significant, as the attitude of the new government towards Kuki-Chin tribes –

which share common identity with the Mizos – will be closely observed, in the wake of the ongoing tensions of these hill tribes with the majority Meitei community of Manipur.

CHANGING POLITICAL EQUATIONS

The assembly election results signify the changing political equations across the country. The following are the significant takeaways from the elections:

First, the results show the consolidation of BJP across the Hindi heartland, its gradual rise across the South and the overall waning of the Congress agenda. They have come as a great setback to the precarious INDIA alliance led by the Opposition parties, besides challenging the dominance of regional parties (like BRS) regardless of how well-entrenched they are. The Telangana rout of the BRS shows that even the most well-entrenched regional party can no longer take its position for granted. Associated with widespread corruption, dynastic family rule and perception among people that they have not benefitted from a slew of welfare schemes, the electoral failure of BRS represents a script that is all too familiar for most regional parties across the country.

Second, the results indicate significant breakthroughs for the BJP across the tribal belt. Together, MP, Chhattisgarh and Rajasthan account for nearly 31% of the total tribal seats across the country. In 2018, the BJP had won only 19 of the 76 ST seats in MP and Chhattisgarh. In 2023, this number became 44, as the BJP managed to bag several of the Congress-voting constituencies. In Rajasthan, the party bagged four additional ST seats compared to last assembly election. In Chhattisgarh, the Congress badly lost in the key tribal areas of Sarguja and

Bastar – the latter being infamous for Naxal infestation – as the party failed to appeal to tribals as well as to disgruntled Christian missionaries, even as the BJP went all-out with its attack targeting religious conversions. Due to its misplaced focus on OBCs, Congress managed to thoroughly alienate the tribals.

How the BJP managed to resonate among the tribals is also interesting. Besides giving them more political representation and announcing hefty landmark welfare measures, a key plank of the BJP – led by PM Modi – was highlighting and targeting the narrative of religious conversions of the tribals, and the cultivation of a nationalistic tribal vote-bank based on tribal identity through the evocation of their long-marginalized historical spiritual figures and freedom fighters. Further, the Sangh Parivar outfits such as the famous Vanvasi Kalyan Ashram have done much to advance, over the years, the Hinduisation of Adivasis across MP and Chhattisgarh and fight Christian conversion.

Thus, while the Congress was lost in the intellectual dispute of difference between Vanvasi and Adivasi, and with Rahul Gandhi lecturing the tribals to protect themselves from mining corporates, the BJP, through its deeper cultural outreach and robust political and welfare narrative, managed to sweep the tribal belt.

Third, the results also show how the political narrative is changing for good in the collective psychology. The level of national self-awareness has gone up to an extent that the people can no longer be misled into believing empty rhetoric or grand narratives. On the one hand, the INDIA alliance has painstakingly sought to mobilize the public around ideologically

polarizing issues such as the caste census or the so-called decline of democracy and secularism. This kind of an agenda not only no longer holds much traction among the people, but also seems to have backfired significantly. On the other hand, the INDIA alliance has also sought to imitate the welfare agenda of the BJP, which in recent times has become a key reason for the electoral success of the BJP. However, here also, the Opposition-ruled state governments have failed due to ill intentions. This is visible in Rajasthan, Chhattisgarh as well as Telangana. Unlike the BJP-ruled states or at the national-level, the attempts of Opposition governments to implement their much-hyped and much-advertised welfare agenda has been mired in corruption and misgovernance. It is, thus, not enough to harp on social justice and welfare, while practicing corruption in actual governance.

Fourth, among the most important factors leading to the BJP victory – despite relative confusion and lethargy among BJP state units in Rajasthan and Chhattisgarh and strong anti-incumbency in Madhya Pradesh – are the firm consolidation of nationalism among the people and the rise of Hindu cultural self-consciousness cutting across all caste and sectional divisions, especially in the Hindi heartland. These are phenomena that have been recurring in incremental ways for some years now, and this mounting tide of Hindu consolidation remains unbroken. It reflects itself as a major explanatory factor in these elections as well. Even the results show that upper castes have unitedly rallied behind the BJP and the OBC vote-bank of the party has strengthened even more massively in these elections. The party has gained substantially even among the Dalits and the Tribals. This shows the changing psychological processes whereby the public is no longer being illusioned by

the caste and sectional vote banks sought to be created by the Opposition forces and is instead embracing its larger cultural unity and identity.

Finally, a major point of debate in the present election results is the issue of the dominant personality of PM Modi which can single-handedly tide over the weaknesses of the state BJP units and governments as well as take on the best of the Opposition agendas. To what extent this ascription of the personality cult of Mr. Modi to victory in elections can be linked is, however, debatable. One important aspect that is often overlooked in this casual ascription of personality politics is that the public is not simply swayed by the personality of the leader, but rather by what the leader is manifesting and representing. Acting as a vessel for channeling something deeper, the personality of the leader simply becomes a useful instrument for that time and place to evoke something that was already buried deep in the collective psyche.

It is, thus, not, as is mistakenly assumed, personality alone that is a factor in mobilizing people. There is a mistaken notion that once the leader is not on the scene the organization he is leading will also dismantle – whether the organization survives, or declines is a moot issue. Instead, a more accurate perspective would be that the work that had to be accomplished through a certain personality would have succeeded in creating the desired psychological change among the people which will prove difficult to reverse even when the leader is not active.

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HIGHLIGHTS

DEVELOPMENTS IN RUSSIA AND UKRAINE

As the Russia-Ukraine war goes on, the overall military situation continues to be characterized by the status quo of the last few months. In recent times, it is also evident that Russia has escalated the hostilities and entered the Ukrainian town of Marinka. The capture of Marinka by Russian forces is regarded as the biggest territorial advance by Russia since the fall of Bakhmut in May 2023. The Russian forces are now intensifying their efforts to expand control over key towns in the Donbas region.

However, the capture of the decimated town of Marinka has come at a big cost to Moscow. Russia's ongoing tank troubles and depleted resources in the aftermath of the capture may hamper its ability to capitalize on the town's beneficial geography or exploit the win. It is also notable that Russia was close to capturing the town of Marinka in June 2023, right after their big capture of Bakhmut. The fact that the Russians could declare victory in Marinka finally in December 2023 – almost six months later – reveals the serious military limitations of the country. Despite these changes, Ukraine is also continuing with its counter-offensive and has downed various Russian fighter jets, besides leading the offensive against Crimea. The war in Ukraine has finally reached Russian territory, with increased raids by Ukrainian sabotage groups into Russia's border regions and the regular shelling of Russian cities.

The continuing military travails of Russia in the ongoing war are further supplemented by its depleting diplomatic capital. Due to recent political developments, Russia is rapidly losing

leverage in Central Asia as well as in the Caucasus, having alienated Armenia. Furthermore, its relationship with Beijing has also predictably become purely transactional, as almost all Chinese partnerships do. A recent example of this is China's exploitation of Russian energy vulnerabilities, as seen through Beijing's refusal to invest in the Power of Siberia-2 natural gas pipeline, which is important to Moscow in offsetting the losses incurred after Gazprom's withdrawal from the European market due to the war. At the same time, China also continues to insist on substantial discounts for Russian gas, thereby demonstrating its superior "bargaining power." As it is, the gas supplies currently flowing through the Power of Siberia-1 pipeline are already being sold to China at almost half the price of rates for the European markets. This shows that Beijing only supports Moscow to serve Chinese interests, for example, leveraging Russian anti-Western narratives in its own propaganda and treating the Russian Far East as a "resource colony" to be exploited.

Furthermore, there is a notable lack of progress in joint Russia-Iran projects, with Russian investments in Iran not yielding any results. Even on the BRICS front, the expectations of Moscow have been belied, as its dream of creating some kind of an anti-western alliance or a common currency is nowhere on the horizon.

Besides these diplomatic setbacks, the internal situation in Russia is not very positive either, despite massive Russian propaganda efforts. An independent poll recently found that, for the first time, more Russians favor talks with Kyiv than continuing the war to a victorious conclusion. The Russian Field research group queried more than 1,600 Russians at the end of October and found that 48 percent favored beginning

negotiations with Ukraine while only 39 percent opposed doing so. This is the first documented time since the beginning of the full-scale invasion that Russians have been divided in this way.

The deteriorating domestic situation in Russia is further demonstrated by the fact that at a time when ordinary political representation is blocked and participation in most protests remains dangerous, the Russian people have intensified the only available safe channel for airing their grievances viz. by writing letters to Putin. The Russian Presidential administration now receives more than 100,000 letters a month addressed to Putin that touch on the adverse impact of the war in Ukraine for ordinary Russians. These letters contain complaints about the poor treatment of contracted soldiers, problems with mobilization, inadequate medical treatment for the wounded, and failure to regularly rotate soldiers from the front, among others.

While these letters reflect the sentiments and suffering of ordinary Russians, underground movements against Russia also continue. These movements are particularly characterized by a regionalist/provincial agenda of autonomy. For instance, a movement known as the “Free Ingria” movement discussed possible independence for St. Petersburg and Leningrad Oblast at its most recent conference.

The anti-Putin sentiment is so steady that even the Russian military is now no longer immune to it. In recent weeks, Russia has witnessed increased reports of violence against military personnel. The violence includes demonstrative retaliation against Russians who avoid conscription and attempts to send wounded soldiers to the Ukrainian front. Those who refuse to

go on the attack are subjected to particularly cruel methods of coercion. These increasingly repressive methods are stirring up discontent, not only among the domestic population but within the Russian military's ranks as well. That the Kremlin continues to send recruits to the front without officially declaring a second wave of mobilization is particularly negative and reeks of weakness. Even the boundaries of law no longer matter. In blatant violations of the law, Russian military officials are even recruiting students regardless of whether they have completed their studies, or their health categorizes them as unfit for service, with recruits often having no opportunity to challenge the summons.

All this has massively increased the distrust within Russia. Putin has singlehandedly managed to break the spirit of his own people in a way rarely seen before. The outcome of such challenges may not be immediately visible to the world, but they are certainly eating Russia from within, leaving its minor military victories hollow.

DEVELOPMENTS IN SCIENCE AND TECHNOLOGY

One of the most remarkable aspects of the past year, as it draws to a close, is the pathbreaking momentum achieved in the field of technology. The past year saw the rapidly rising pervasiveness of Artificial Intelligence (AI) in major aspects of our everyday lives. From ChatGPT and its competitive variants to debates on Metaverse and various dimensions of reality to AI-powered smart devices, the debate around AI now no longer evokes wonder but has started evoking existential questions and dilemmas. These dilemmas acknowledge the irreversibility of the AI revolution, even as the debate turns

from wonder and fascination with AI to questions about how to co-exist with this rapidly rising technology.

As the year ended, an interesting aspect of this debate was highlighted by the lawsuit initiated by New York Times (NYT) against OpenAI and Microsoft – which have powered the ChatGPT technology. NYT sued these companies for the unlawful use of its copyrighted content through their generative AI technology. Such generative AI platforms can merely scrape the Internet to build and train themselves. Such AI systems are, after all, built on the back of work done by creators of original content which is then synthesized through an algorithm and presented as fresh information by the AI systems. The NYT, in its lawsuit, alleged that OpenAI and Microsoft used its content without payment to create products that substitute for The Times and steal audiences away from it, besides depriving it of subscription, licensing and advertising revenue. NYT further alleged that millions of its articles were used to train automated chatbots, which now compete with the news outlet as a source of reliable information.

The controversy highlights not only the debate on diminution of Intellectual Property Rights (IPRs), but also the massive challenge of regulating an AI that is always changing itself. In this context, governments are now trying to play catch-up, as the focus of the nations moves from military applications of AI to also encompass its civil regulation. Besides the passage the AI Act by European Union and UK-sponsored AI Safety summit, India also took the initiative by hosting a summit of the Global Partnership on Artificial Intelligence (GPAI) in New Delhi recently, in which it tried to highlight not only the benefits of AI, but also the risks associated with it and the need for its regulation in civil domains such IPRs, privacy, security, fairness

and other such difficult questions. The inter-governmental debates now also encompass public safety issues such as those posed by Frontier AI – highly capable foundation generative AI models that could possess dangerous capabilities and pose severe risks to public safety – as well as the common pervasiveness with which deepfakes are being used.

CRIMINAL LAW OVERHAUL

The winter session of the Parliament, coming in the wake of BJP victory in state assembly elections, took place amidst intense acrimony and dramatic developments in the Parliament. The session witnessed a serious security breach in Parliament, the suspension of record 146 Members of Parliament (MPs) and the disqualification of TMC MP, Mahua Moitra, over cash-for-query scam. Despite this, a number of bills were passed in this session.

Amongst the most crucial of such bills were the three bills which aim at bringing about a change in the criminal law system of the country to dismantle the colonial era architecture – The Indian Penal Code, 1860 (IPC) will be replaced by the Bharatiya Nyaya Sanhita (BNS); the Code of Criminal Procedure, 1973 (CrPC) will be replaced by the Bharatiya Nagarik Suraksha Sanhita; the Indian Evidence Act, 1872 will be replaced by the Bharatiya Sakshya Adhinyam.

Bharatiya Nyaya (Second) Sanhita Bill, 2023

The following are the key changes made in this bill:

First, terrorism has been defined in very specific terms in this bill. Section 113 of the revised Bill has modified the

definition of the crime of terrorism to entirely adopt the existing definition under Section 15 of the Unlawful Activities (Prevention) Act, 1967 (UAPA). The UAPA, often labeled as draconian, defines as a terrorist act any act ‘with intent to threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country.’ The offence is punishable with death or imprisonment for life. Those who conspire, abet, incite, or facilitate the commission of a terrorist act could face imprisonment ranging from five years to life.

The definition of terrorism has also been expanded to include threats to monetary stability and economic security.

Second, section 86 of the revised Bill defines “cruelty” against a woman by her husband and his relatives, which is punishable with a jail term of up to three years. Akin to Section 498A of the IPC, 1860, the new bill defines cruelty as, (a) willful conduct likely to drive a woman to commit suicide or cause grave injury or danger to the life, limb, or health (whether mental or physical); or (b) harassment of a woman to coerce her or any person related to her to meet any unlawful demand for property or valuable security.

Third, section 73 stipulates that those who print or publish ‘any matter’ concerning court proceedings in rape or sexual assault cases without permission would be punished with a two-year jail sentence and a fine. This is to ensure that identities of rape victims are not made public.

Fourth, provision of either death penalty or life term has been introduced for gangrape of minor and for mob lynching. The latter is for cases when a mob of five or more people

commit murder based on factors such as race, caste, community or personal belief.

Fifth, section 377 from IPC, 1860 has been read down entirely. Moreover, the Parliamentary panel recommendations have also not been included in the new bill. The panel had made two important recommendations. First, it had suggested that adultery should be criminalized in a gender-neutral manner since it is crucial to safeguard the sanctity of the institution of marriage. Second, the panel had – in keeping with the Supreme Court judgement in *Navtej Singh Johar v. UOI* (2018) which had decriminalized consensual same-sex relations between adults, while keeping other provisions of section 377 – recommended that non-consensual same-sex relations should be retained as criminal offence.

Unfortunately, the new bill does not include either of the two recommendations. This means that adultery is no longer an offence, and neither are there special criminal provisions for rape committed in same-sex intercourse.

Sixth, the new bill introduces Clause 69 to tackle the menace of love jihad, by criminalizing deceitful promise to marry. Deceitful means include sexual intercourse not amounting to offence of rape, false promises of employment or promotion, inducement or marrying after suppressing identity.

Seventh, for the first time, tackling organized crime has been brought under ordinary criminal law. In cases of organized crime, the laws give the state vast powers of surveillance and the standards for evidence and procedure are also relaxed in favour of the state. In the new bill, if death is caused due to organized crime, the punishment will range from life imprisonment to death penalty. In case there is no death, the

bill mandates a minimum prison sentence of five years which may extend to life imprisonment. A separate category of petty organized crime has also been introduced, which criminalizes theft, snatching, cheating, unauthorized selling of tickets, unauthorized betting or gambling, selling of public examination question papers.

Finally, the new bill introduces sedition in a different and wider form. Apart from a name change from *rajdroh* to *deshdroh*, the new provision brings under its ambit aiding through financial means acts of subversive activities and those encouraging feelings of separatist activities.

Bharatiya Nagarik Suraksha (Second) Sanhita, 2023

The following are the key changes made in this bill:

First, community service has been defined as a new form of punishment under Section 23 of the revised Bill. Community service is ‘work which the Court may order a convict to perform as a form of punishment that benefits the community, for which he shall not be entitled to any remuneration.’ A Magistrate of the First or Second Class has been specifically empowered to impose this punishment, to encourage a more reparative approach to minor crimes.

Second, handcuffing, under section 43(3), has been restricted to select heinous crimes like rape and murder instead of extending its usage to persons who have been accused of committing ‘economic offences.’ Further, the power of the police to use handcuffs has been expanded beyond the time of arrest to include the stage of production before court as well.

Third, section 187(3) of the bill talks about police custody beyond the initial 15-days of arrest. The new bill implies that the prescribed 15-day-period of police custody can now be an aggregate of shorter periods of custody sought over the entire period of investigation lasting 60 or 90 days (depending on the nature of the offence.) While the Parliamentary panel had flagged that the provision could be misused since people, particularly those hailing from marginalized backgrounds, may be subjected to extreme custodial violence, these concerns were not taken into account in the new bill.

Fourth, section 172 of the bill talks about Preventive Detention. Under the revised bill, the detained person must now be produced before the Magistrate or released in petty cases within 24 hours.

Bharatiya Sakshya (Second) Bill, 2023

A significant change in the new bill concerns section 61. This section of the bill allows the admissibility of electronic evidence by underscoring that an electronic record shall have the same legal effect as a paper record, subject, however, to requirement for a certificate under section 63.

Overall, the three bills, while making the task of overhaul of criminal law more concise and pointed, do not represent a very major departure from the laws they are replacing.

Other Major Bills Passed in the Winter Session:

Bill – The Telecommunications Bill, 2023

Contents – The Bill seeks to replace the Indian Telegraph Act, 1885 and the Indian Wireless Telegraphy Act, 1933.

Contents – Authorization will be required from the central

government to: (i) establish and operate telecommunications networks, (ii) provide telecommunications services, or (iii) possess radio equipment.

Contents – Telecommunication may be intercepted on specified grounds including security of the state, public order, or prevention of offences. Telecom services may be suspended on similar grounds.

Contents – The central government may provide for measures to protect users such as requiring prior consent to receive specified messages, and creation of a do not disturb register.

Bill – The Jammu and Kashmir Reorganization (Second Amendment) Bill, 2023

Contents – The Bill amends the Jammu and Kashmir Reorganisation Act, 2019. The Act provides for the reorganisation of the state of Jammu and Kashmir into the union territories of Jammu and Kashmir (with legislature) and Ladakh (without legislature).

Contents – The Bill reserves one-third of all elected seats in the Jammu and Kashmir Legislative Assembly for women. This reservation will also apply to the seats reserved for Scheduled Castes and Scheduled Tribes in the Assembly.

Contents – The reservation will be effective once the census conducted after the commencement of this Bill has been published. Based on the census, delimitation will be undertaken to reserve seats for women.

Bill – The Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, 2023

Contents – The Bill replaces the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991. It provides for the appointment, salary, and removal of the Chief Election Commissioner (CEC) and Election Commissioners (ECs).

Contents – The CEC and ECs will be appointed by the President upon the recommendation of a Selection Committee. The Selection Committee will consist of the Prime Minister, a Union Cabinet Minister, and Leader of Opposition/leader of the largest opposition party in Lok Sabha.

Contents – The salary and conditions of service of the CEC and ECs will be equivalent to that of Cabinet Secretary, which is determined by the government. Under the 1991 Act, it was equivalent to the salary of a Supreme Court Judge, which was determined by an Act of Parliament.

Contents – The Bill has been in controversy due to perception of increased influence of the central government in the matters of appointments and salary of the CEC and ECs.

COP28 ANNUAL CLIMATE SUMMIT: MUCH ADO ABOUT NOTHING

The annual 28th Conference of Parties (COP28) to the United Nations Framework Convention on Climate Change (UNFCCC) has followed a predictable pattern. The COP was being held at a time when global warming was breaking new records. The year 2023 was already confirmed to emerge as the hottest year ever. Several months in 2023 set new temperature records. More than 80 days during 2023 happened to be at least 1.5 degree Celsius warmer than pre-industrial times.

At the same time, every assessment showed that the world was not doing enough, and that the 1.5-degree target was rapidly slipping out of hand. COP28, therefore, was expected to stimulate more ambitious climate actions, particularly between now and 2030. Viewed in the face of the climate emergency, the latest COP again fell well short of expectations.

The deadlock among countries over the questions of responsibility for climate finance, technology transfer and extent of mitigation continues as before. With these perennial problems, the outcome was also a watered-down document.

The key takeaways from COP28 in 2023 are:

Fossil fuel phase-out:

This was the most hotly contested issue at COP28, and the reason for a prolonged deadlock. The role of fossil fuels in causing global warming had never been even acknowledged in any earlier COP decision, but this was getting increasingly untenable. After many deliberations, the final agreement called upon countries to contribute towards “transitioning away” from fossil fuels, “so as to achieve net zero by 2050”. There were no time schedules and no targets. Some countries were even extremely disappointed that the term “fossil fuel phase-out” had not even been used.

Tripling of Renewable Energy:

This was an expected outcome, and the only one that contributes to additional emission reductions between now and 2030. The COP28 agreement calls upon countries to contribute to tripling of global installed capacity of renewable energy and doubling of annual improvements in energy efficiency.

Together, these two measures have the potential to avoid emissions of about 7 billion tonnes of carbon dioxide equivalent between now and 2030, more than all the net result of all the other climate actions being currently taken. Tripling is a global target, and it is not incumbent on every country to individually triple its current installed capacity. It is thus not clear how this tripling would be ensured.

Phase-down of coal:

Coal was already singled out for phase-down in the Glasgow COP in 2021. In this COP too, the Glasgow language was reiterated. There is nothing about how this phase-down is to be measured, or from what baseline.

Methane emission cuts:

The agreement talks about “accelerating and substantially reducing non-carbon-dioxide emissions globally, including in particular methane emissions by 2030”. Methane is the most widespread greenhouse gas apart from CO₂, accounting for nearly 25 per cent of all emissions. It is also about 80 times more potent than CO₂ in causing global warming. Methane emission reductions can therefore bring substantial benefits. But several countries, including India, are extremely opposed to any mandate to cut methane emissions, mainly because one of their major sources happens to be agriculture and livestock.

Loss and Damage Fund:

For the poor and vulnerable countries, this was the most important outcome. The money from the fund is meant to provide financial help to countries trying to recover from climate-induced disasters. A decision to set up a Loss and

Damage Fund had been taken last year at COP27 in Sharm el-Shaikh but it had not been created, and no money had been promised. COP28 operationalised this fund on the opening day of the conference, and several countries, including hosts UAE, made funding commitments. By the end of the conference, commitments worth about US\$ 800 million had been made. This is a meagre amount compared to the cost of the climate crisis facing humanity. Therefore, the fund appears to be toothless for all practical purposes.

Global Goal on Adaptation:

This was another important step developing countries had been waiting for. Historically, adaptation hasn't received enough attention, or resources, as compared with mitigation activities, mainly because adaptation is largely a local endeavour. Its benefits also are mostly local. But developing countries had been arguing that a global framework for adaptation was necessary to bring more attention to it. While the COP at Glasgow in 2021 had setup a two-year work programme for a global goal on adaptation, COP28 finally adopted this goal. However, mere adoption of this goal will merely remain a formality until a lot more is done to operationalize adaptation, by identifying indicators for adaptation and making financial provisions to realize adaptation activities/projects.

Thus, in terms of overall assessment, it appears that despite much hype, like its predecessors, COP28 too turned out to be more about signaling than doing. In terms of concrete achievement, even with all that has been agreed upon, we are nowhere close to averting the impending climate doom facing humanity. This COP is priding itself on making a mention of fossil fuels for the first time – an irony considering that fossil

fuels are responsible for the climate crisis. It is also priding itself on – again for the first time – linking climate change impacts to biodiversity, health and food security. These pledges represent the kind of minimalism whose agreement should have been a long-forgone conclusion. But when minimal starting points become end-term commitments, there is little that can be done to avert the crisis facing us.

India

“In India alone there is self-contained, dormant, the energy and the invincible spiritual individuality which can yet arise and break her own and the world’s fetters.”

– Sri Aurobindo
(CWSA 12: 42)