



Detailed News Articles: 10 May 2019

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1. By established law and procedure

Analysis:

- Experts opine that a well-publicised case of a complaint by a former employee of the Supreme Court of India against the Chief Justice of India (CJI) has raised questions about legal provisions, procedural propriety and different facets of what could be categorised as principles of natural justice.
- It is important to note that as a constitutional institution, the Supreme Court had to respond to the same.

The Procedure Followed:

- The procedure that was being followed cannot be criticised as being either illegal or otherwise arbitrary.
- A procedure had to be devised as the circumstances were unique, without any precedent.
- The only guidance available was a '**Report of the committee on in-house procedure** (in brief "procedure"), drawn up by a meeting of the full court of the Supreme Court on December 15, 1999.
- The procedure adopted is a public document available on the court website.

What does the Procedure deal with?

- It deals with situations involving a High Court judge, a Chief Justice of a High Court and a judge of the Supreme Court separately.
- The procedure specifically states that even in the case of an inquiry into a complaint received against a judge of the Supreme Court, the committee shall hold an inquiry on the same pattern as the committee constituted to examine a complaint against a judge of the High Court.
- It is important to note that the procedure does not expressly deal with the case of the CJI but it definitely would be applicable to the case of the CJI as well because the CJI is also a judge of the Supreme Court.
- Thus, the procedure does not contemplate the participation of a legal practitioner because it would not be a formal judicial inquiry involving the examination and cross-examination of witnesses by lawyers.
- It has to be remembered that the committee was bound by the rules under which it has come into being, and though as per the report it is entitled to devise its own procedure (where certain parameters have been laid down in the in-house procedure), the same cannot be deviated from.

Any substance in doubting the process?



- The complainant did appear before the committee three times, as newspaper reports would show. It seems she did ask for permission to engage a lawyer, but it was denied.
- It also seems that she decided to stay away. It is her choice.
- But it is difficult to countenance an opinion that the complainant felt intimidated by three Supreme Court judges being present, to hear and consider her version.
- The members of the committee are Supreme Court judges, comprising the seniormost judge of the Supreme Court and two women judges. Is not the fact that two of the members of the committee are women, one which would serve to make the complainant give her version in a more relaxed atmosphere?
- Is it right on our part to be sceptical about the propriety and correctness of the procedure followed by three Supreme Court judges, persons with unblemished reputations, in their character, conduct and integrity?
- A trust deficit would be counterproductive in these circumstances.

The Legal precedent:

- A claim for a copy of the inquiry report will have to be turned down going by the law laid down by the Supreme Court in **Indira Jaising v. Supreme Court of India & Anr [(2003) 5 SCC 494]**.
- The report in the said case was made to the CJI and the report was confidential and discreet, only for the purpose of his information and not for disclosure to any other person.
- Because the inquiry in the present case was into the allegations made against the CJI, the report has advisedly been given to the next seniormost judge (next in seniority to Justice S.A. Bobde and Justice N.V. Ramana).
- Experts opine that the procedure laid down in the in-house procedure has been adhered to in the present case.
- The law in Indira Jaising has also been adhered to. The complainant does have remedies in law.
- Some experts take the opinion that the principles of natural justice which are alleged to have been violated in the present case, by the refusal on part of the committee to afford the complainant a right of legal representation and the decision not to publish the report of the committee, do not and cannot have a straightjacketed approach.
- What has been done by the committee is in accordance with the procedure that is laid down. In doing so, it cannot be said that there is a violation of natural justice for the simple reason that what is involved is not a judicial inquiry but a fact-finding one.
- A right of legal representation is not inherent in such an inquiry.

The Judiciary: A Cherished Institution

- The higher judiciary of this country is an institution to be cherished and its reputation is a matter dear to every citizen of this country.



- Some of us are more vocal than the rest, but all of us are stakeholders.
- The Supreme Court and the High Courts are constitutional institutions and the men and women who occupy positions in the higher judiciary are required to be persons of impeccable integrity.
- However, men and women are not infallible, and why should judges alone be an exception thereto?
- The founding fathers of the Constitution were wise persons and constitutional protection is afforded to the judges to see that they are able to discharge their duties for the benefit of the citizens of the country, without fear or favour, but this is not to say that there can be no complaint against a judge of the Supreme Court or the CJI.
- When such a complaint is made, it has to be inquired into in accordance with the procedure that is laid down by the full court of the Supreme Court itself, and the said in-house procedure has been laid down keeping in mind the constitutional ethos.

Concluding Remarks:

- The said in-house procedure has all the attributes of law.
- It is a law governing such situations.
- Where the law is adhered to, claims for deviation therefrom or complaints of adherence to it cannot be countenanced.

2. [Loud and clear: on India-U.S. discord on market access](#)

Analysis:

- Experts opine that after this remark by U.S. Commerce Secretary Wilbur Ross, it is no longer possible for the government to brush under the carpet its differences with Washington.
- Ross made these comments speaking to Indian and U.S. businesspersons.
- As a matter of fact, his comments followed a series of measures by the U.S. that have affected India.

Recent Measures that the U.S. has taken:

1. Refusal to revoke or waive tariff increases made last year (2018) on steel and aluminium,
 2. An ultimatum that India “zero out” oil imports from Iran by May 2, 2019 even without securing comparable alternatives, and
 3. the decision to withdraw India’s GSP (Generalised System of Preferences) trade status.
- It is important to note that Mr. Ross repeated President Donald Trump’s accusation that India is a “tariff king”, and threatened India with “consequences” if it responded to U.S. tariffs with counter-tariffs, something New Delhi had threatened but not yet implemented in the hope of hammering out a comprehensive trade package.



- Despite rounds of talks, however, a package has remained elusive, and it is time for the government to articulate the problem on its hands.

A Prescription for the New Government in India:

- In the face of growing U.S. aggression on the issue, the government that takes office after the elections in India will have to urgently consider its options ahead.
- Clearly, the strategy of the past year (2018), to ignore the differences in the hope that the problems would be resolved or that the U.S.'s trade war with China would occupy the Trump administration more, has not worked.
- New Delhi and Washington need to make a more determined attempt to sort out issues, starting from scratch if required, with tariffs.
- Further, while the 50-60% duties on motorcycles and cars and 150% duties on American liquor that India imposes need a second look, the U.S. must see that average tariffs imposed by India (13.8%) are not much higher than those levied by economies such as South Korea and Brazil.
- In addition, the government will need to revisit some of its decisions like data localisation requirements and new e-commerce regulations, which were declared suddenly, while **the U.S. must show some flexibility on India's price caps on coronary stents and other medical devices.**
- The U.S. must understand the cultural differences over the labelling of non-vegetarian dairy products.

Concluding Remarks:

- It is unlikely that the Trump administration will temper its “my way or the highway” approach to Iranian oil sales, and New Delhi will have to work closely with other countries to build alternative financial structures to avoid U.S. sanctions.
- Where a compromise is not possible, the government should be ready to push back on unreasonable demands.
- Perhaps the most worrying signal from Mr. Ross's outburst was that Washington may not be willing to meet India halfway on trade issues. New Delhi must prepare accordingly.

3. [Are farm loan waivers a political gimmick?](#)

How grave is the situation for small and marginal farmers?

- Farm distress is real because there have been low agricultural prices and low farm incomes.
- The farm sector growth rate is much lower than in earlier periods.
- As a result, farm prices are low despite production rising.
- The demand is also low.
- So, whether the increase in farm production is enough for incomes is not clear.
- For small and marginal farmers, the additional problem is that the size of land holdings is declining.



- Earlier, the average size was two hectares, now it has come down to nearly one hectare.
- Marginal farmers have less than half a hectare.
- With these sizes, income is difficult to sustain.
- The recent stress is also because prices are much lower than the MSP [minimum support price] in the market, while long-term problems such as low capital formation in agriculture persist.
- Public investment in the sector as a percentage of GDP is also stagnant.
- So, these factors, along with two years of drought, have led to this.
- Another thing is that the non-farm sector creates jobs.
- As per NABARD [National Bank for Agriculture and Rural Development] data, 23% of rural income is from agriculture, so the rest is from non-farm activity.
- The rate of growth in agricultural wages has stagnated and is lower than in earlier years when MGNREGA and the construction sector helped boost wages.
- The rural economy overall, agricultural as well as non-farm, is facing a demand problem and low incomes, which has caused farm distress.

Some factors in farming households contributing to the stress:

- The government had focused on managing inflation in the early years of its tenure and the inability to generate jobs could have created non-farm avenues for the youth in farming households. This has contributed to the stress.
- The agriculture focus is short term, [which is why we have] loan waivers, but the focus on how to generate incomes and jobs has been lacking.
- The construction sector was earlier responsible for higher wages and demand, but now that sector is also stagnating.

Farm loan waiver scheme: A workable strategy?

- Eleven years ago, the UPA announced a massive farm loan waiver scheme. But the impact of this scheme on farm income was limited.
- In the present day, institutional credit to farmers is just 64%, so the rest is from non-institutional sources.
- The large farmers corner the institutional credit, and small and marginal farmers get non-institutional credit at interest rates of 25-30%.
- Moreover, there is a moral hazard problem as banks get affected — farmers say they don't have to repay the loans as there will be a waiver some time.
- There are opportunity costs for this loan waiver spending.
- Several States have started them, including Madhya Pradesh, Rajasthan and Chhattisgarh.
- This will also have fiscal implications.
- However, some people say banks have written off ₹5 lakh crore of corporate sector debt, so why not farmers? But both the write-offs are bad.

PM-KISAN scheme:



- The Centre has announced the PM-KISAN scheme under which ₹6,000 per year will be given to 12 crore small and marginal farmers holding cultivable land up to two hectares.
- This is similar to the loan waiver in terms of quality spending but only slightly better than loan waivers, as smaller farmers could also get this amount.
- Telangana and Odisha have also started such schemes.
- The amount may not be very high for farmers, but its implementation may be relatively easier as it's a direct cash transfer.
- But it's also similar to farm loan waivers and is just a palliative.

Some steps promised by the Congress Party:

- The Congress had announced farm loan waivers in States like Madhya Pradesh. It has also promised a new law to waive farm loans, a separate farmer budget, and a minimum income support scheme.
- There are certain sections of experts who support cash transfers to the poor.
- It is important to note that farmers and agricultural labourers face several risks, so some social protection measures are important for an economy which has 90% of the workforce in the un-organised sector.
- But on the other hand, if you want to remove distress, these are not the solutions.
- In the NYAY [Nyuntam Aay Yojana] scheme announced by the Congress, it's not clear where the money will come from.

A Critical View on Farm-Load Waivers:

- Critics opine that this is not a solution.
- First, it doesn't really help the needy farmers who borrow from moneylenders.
- Second, it creates a bad credit culture.
- As we go along, commercial banks will become hesitant to give loans to farmers because from time to time, this particular problem comes up.
- This is not a good use of taxpayers' money.
- You need to find a solution to the basic problems of farmers.
- Their distress is real, and on both the supply and demand sides.
- An important question arises: do you need to reorient the entire system, from being consumer-oriented to producer-oriented?
- Whenever you have a problem, you want to protect the consumer with low prices for farm products. When prices rise, you want to import and ban exports. Your support price policy helps only a few crops for which you undertake procurement.
- That actually distorts the cropping pattern, so even if paddy and sugarcane are water-intensive crops, farmers prefer them as there is some stabilisation in prices.
- With regards to the money that the Government is using on farm loan waivers and other subsidies, if only it could be used on infrastructure, developing markets and processing and transportation networks, it would be a huge thing.



- Removing the oligopoly of agricultural markets is important.

Some Needed Reforms in the Farming Process:

- The government wants to double farm incomes by 2022.
- In an effort to achieve this, freeing farm markets from excessive regulation along with some safeguards would be a better alternative to multiple state interventions at every step of the farming process.
- It is important to note that even if you increase procurement prices, it will be useful only for those crops that the government procures.
- Many States don't procure most items.
- Agricultural markets are in very bad shape and marketing reforms are very important as is the removal of middlemen.
- Many interventions are needed on both the demand and supply side.
- Further, market reforms are the biggest change needed.
- MSP is not a solution, which focuses on cereals like rice and wheat.
- Very few reforms have taken place in market infrastructure, value chains, logistics, processing and warehousing to boost farmer incomes.
- We also need a consistent import and export policy, which is lacking, so that farmers can sell their excess produce.
- For perishables, a different model is needed.
- Returns are much higher if the same amount of money spent on loan waivers and income support schemes is deployed on things like water and technology, research and extension services.

A Rebooting of Structures:

- Political parties largely don't have a long-term view.
- Immediate solutions that lend themselves to sloganeering are the big issue.
- Somebody has to come and say, look, my agenda is not to double farm incomes, but these are the reforms I will implement for a better future for farmers.
- Another issue is the consolidation of holdings.
- Small farms have become unviable.
- Farm labourers are not available because of MGNREGA.
- Many of them have migrated to urban areas in search of work.
- We need to legally facilitate the consolidation of holdings.
- Information asymmetry is a big problem too. When the farmer is going to the market with his bullock cart full of produce, he doesn't know what prices he is going to get for his produce.
- If prices are low, he can't just return as he has to pay rent for the cart and other things, so there is a distress sale as many crops are perishables.
- We have never thought of this in a comprehensive manner, and unless there is a package of holistic measures, all this talk of doubling farm incomes is meaningless.

Concluding Remarks:



- Giving a minimum basic income deserves to be looked at, but you can do that fiscally only when you get rid of all other subsidies and transfers.
- The basic issue is the sustainability of a policy measure such as minimum income.
- The other important thing is farm insurance, which needs to be expanded much more so that farmers are protected from the vagaries of nature.
- Compared to earlier schemes, the recent farm insurance programme is better, but still many farmers have not benefited because of implementation problems.
- It's a long way to go. We don't have crop cutting experiments, State governments are not working on it properly when disasters take place.
- Between subsidies and investments, there is a trade-off — when subsidies increase, investment declines.
- On old-age pension, there was a scheme that gave ₹200 a month earlier.
- State governments have offered ₹2,000 in some places. Farmers also come under that scheme.
- Basic minimum income can be considered if you remove non-merit subsidies and move fertilizer subsidy to cash transfers as you can save more and improve soil fertility too.

4. [Endless war: on U.S. putting pressure on Taliban](#)

Analysis:

- Over a four-day meeting that ended on May 2, 2019, the Jirga asked the government to set up a negotiating team with members from the assembly for talks with the insurgents.
- The Loya Jirga also backed women's rights, a critical issue being debated by the political class amid the Taliban's rising clout.

Reaction to the Proposal:

- President Ashraf Ghani has said his government would honour the assembly's proposals, but wants the ceasefire to be mutual.
- The Taliban, for its part, immediately shot down the proposal, vowing to continue attacks through the Ramzan month.
- It is important to note that without the Taliban's reciprocity, no ceasefire will hold.
- The group controls half of Afghanistan and has shown its capacity to strike anywhere, including in the most fortified of locations.
- It has also been engaged in direct talks with the U.S. for months.
- However, the peace talks haven't prevented the Taliban from carrying out its summer offensive against the government.
- It is important to note that by rejecting the Loya Jirga proposal, the Taliban has once again made it clear that it is not ready yet to engage with the government in Kabul.

Impact of the position taken by the Taliban:



- The Taliban's intransigence has darkened the prospects for peace.
- The talks between Taliban representatives and Zalmay Khalilzad, the U.S. special representative, are primarily focussed on withdrawing foreign troops from Afghanistan.
- The U.S. seeks, in return, an assurance that Afghanistan will not provide a safe haven to transnational terrorist groups such as al-Qaeda and the Islamic State.
- However, for an eventual settlement of the Afghan crisis, the government and the Taliban need to talk. The war has long been in a stalemate.
- But the government and the Taliban see different ways out.

Differing views of the Government and the Taliban:

- The government is willing to engage the insurgents. As a matter of fact, this move has now been endorsed by the Loya Jirga as well.
- However, the Taliban, like any other successful insurgent group, wants to prolong the conflict, hoping that it can weaken the government's morale and reduce its military strength.
- Experts opine that the Taliban will change tack only if it is forced to do so militarily or through pressure. However, the government lacks the resources to accomplish either.
- It cannot defeat the Taliban militarily, as the 17 years of the war suggest.
- It cannot forge peace on the Taliban's terms as it would mean endangering whatever few freedoms the Afghans enjoy right now.

Concluding Remarks:

- Experts opine that this resource deficit can be bridged only with the help of the international community.
- The U.S., which is in talks with the Taliban, should not overlook the interests of Kabul.
- It must put pressure on the Taliban to cease hostilities and engage with Mr. Ghani's government.

Thank you!