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Our Vote, Our Laws

When articulating “rule of law”, we must recognise it is often dented by arbitrary, unjust state actions

TOI Editorials



Chief Justice of India NV Ramana has warned that the right to change governments through elections “by itself, need not be a guarantee against tyranny”. He underscored that recognising citizens as the ultimate sovereign and qualifying as a “properly functioning democracy” necessitated public discourse that is “both reasoned and reasonable”. To elections and public discourse, he tagged “criticisms and voicing of protests” too as integral to the democratic process. Executive and legislature too must “assume responsibilities of upholding constitutional values and ensuring justice in the first place” so that judiciary can act as an important check later.

Nothing controversial or unexceptionable here. Post-electoral exercises of political power by elected governments have been a mixed bag, not just in India, but democracies everywhere. A government’s exercise and interpretation of its popular mandate can foment opposition. And there’s no set template for systemic responses in India. From ramming its intent past dissenters, or entering into a vigorous discourse through parliamentary debate and direct political messaging, to facing scrutiny from courts, democracy and its countervailing checks and balances operate through many modes.

Laws like sedition, a remnant of British Raj’s “rule by law” mentality, enjoying currency in national and state capitals buttress CJI Ramana’s warning about tyranny. The 1973 Kesavananda Bharati judgment enunciating the basic structure doctrine to prevent wayward constitutional amendments had recognised the danger of an elected government turning rogue. The Emergency two years later vindicated SC. The antidote is for both elected and unelected bodies – all the hallowed democratic institutions with constitutional sanctity – to recognise their limits and act energetically and creatively within the due process and procedure.

This would demand governments enact laws that uphold equality and aren’t arbitrary; all sides allow legislatures to function without disruption or short shrift to procedures; judiciary refraining from policymaking; and independent public platforms like media, academic spaces, and NGOs having freedom to question the state.

A counterculture of admiration for populists who betray impatience for democratic niceties and bend chaotic collective will is an ongoing challenge. But appeal of the “rule of law” hasn’t dimmed one bit. That’s why dissenting J&K residents approached SC over arbitrary internet shutdowns and harried Bengal BJP took Mamata govt to court for alleged post-election excesses. Let no one stop judiciary from enjoying complete freedom to check governmental power, as CJI Ramana wanted.

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Slight objection, Milord

CJI is right. Elections don’t guarantee democracy. But judiciary’s delays & overreach are also issues

R Jagannathan, [Editorial director of Swarajya]

Chief Justice NV Ramana, speaking to a virtual audience in the 17th Justice PD Desai Memorial Trust lecture, underscored what real democracy should mean anywhere in the world. It is not merely about elections and the people’s ability to change governments; it goes beyond enforcing the law to ensuring that any law is legislated through a participative process and is easy to comprehend; it’s not just about a judiciary that is independent of the executive but also from undue influences, including a raucous social media that often is unable to distinguish between right and wrong.

Among other things, Ramana said, “the mere right to change the ruler once every few years, by itself, need not be a guarantee against tyranny” The post-electoral foibles of the elected can be fought only if other organisations of the state, including the judiciary, do their bit. He said: “The masses have performed their duties reasonably well,” and it was “the turn of those who are manning the key organs of the state to ponder if they are living up to the Constitutional mandate.”

As a master-class in the basics of democracy, this magisterial speech will stand out, even though previous judicial eminences have often said similar things. In July 2018, Justice Ranjan Gogoi, who was later to become Chief Justice of India, had this to say in his Ramnath Goenka Lecture: robust democracy needs “not only independent judges and noisy journalists, but even independent journalists and sometimes noisy judges.” The last was probably a reference to the unprecedented press conference held by four sitting Supreme Court judges, including Gogoi, where they alleged that all was not well with the highest court.

The problem lies not in the essence of what CJI Ramana said, but in two different areas. One is the tendency of the media and political parties to over-read what is being said. It would not be unreasonable to read this as a message to the Modi government that it is not beyond judicial scrutiny just because it won two huge mandates in 2014 and 2019. But it can equally mean that Mamata Banerjee, who won an even bigger mandate in West Bengal this year, should pay heed.

So, yes, the judiciary has a role to play in preventing executive excesses but the thing that should concern us is not what judges say, but what they do. When two judges recuse themselves from hearing cases involving post-poll violence in West Bengal, one wonders if this is not an abdication of duty in a case where life and liberty are directly at stake.

In today's age of political and economic disruption (2008, the eurozone crisis, and now the pandemic), scared voters everywhere have been looking for reassurance that things will be fine. Often, they tend to vote for politicians who are able to tap into their insecurities and promise easy solutions. From Donald Trump in the US to Viktor Orbán in Hungary, Vladimir Putin in Russia, Boris Johnson in Britain and even Narendra Modi in India, voters have opted either for "strong" leaders, or leaders offering simple solutions (Joe Biden, for example) in a complex world. This has happened locally too, where voters have given clear mandates to Banerjee in West Bengal, MK Stalin in Tamil Nadu and Pinarayi Vijayan in Kerala, among others. Split mandates have been rare in recent years.

In this scenario, elected political leaders can easily come to believe that voters have given them a carte blanche to do what they think is right, and the deliberative process is short-circuited, as was probably the case with the farm reform laws. They were sorely needed, but farmers did not get to participate in it and now are out in the streets claiming it's bad for them. In a democracy, people's participation cannot be limited to one day at the polling booth. It has to involve regular engagement – which is what the CJI was hinting at.

However, this kind of daily democracy is hard to practice in a diverse society where opposition exists often just for opposition's sake. Building a consensus can mean deadly delays which can cost the country dear. And the judiciary is often a complicating factor when it gets into issues that go far beyond upholding the constitution. We lost a decade in coming out of the negativity delivered by sweeping judicial verdicts in the 2G and coal block allocation scams, and today every deal, every project, from Rafale to the Central Vista, is being made to jump through legal hoops using public interest litigation (PIL) that may sometimes be driven by vested interests.

On the other hand, the judiciary has been slow in delivering judgments in cases with a larger social and political impact. Why did it take the SC nine years after the Allahabad HC judgment in the Ram Janmabhoomi case to deliver a final verdict? Why is it fighting shy of speeding up important constitutional cases, including the CAA, the nullification of Article 370, Sabarimala, et al?

Equally questionable is the judiciary's tendency to overreach in matters that should be in the executive's domain. Some years back, the apex court, while dealing with hearings related to pollution in Delhi, actually directed the levy of a tax on SUVs entering the capital. Taxation is definitely not the judiciary's domain. More recently, it has decided to sit in judgment on the vaccine pricing policy, the method of allotment of oxygen cylinders etc. It is one thing to mark yourself out as the champion of people's rights and then inadvertently proceed to damage the other institutions that are equally important to a well-functioning democracy. Independence is not something reserved exclusively for the judiciary.

None of this takes anything away from the sentiments and ideas expressed by CJI Ramana. They stand as sound principles on which to build a robust and vibrant democracy. But as Roman nobleman Cassius tells Brutus in Shakespeare's Julius Caesar, "The fault, dear Brutus, is not in our stars, but in ourselves, that we are underlings."

CJI Ramana and his successors will have ample chances to prove that they mean what they say.

The Medium is a Message

Manoj Joshi, [The writer is distinguished fellow, Observer Research Foundation (ORF), New Delhi]

Last month, as reports of clandestine meetings between Indian and Pakistani officials leaked out to the media, along with GoI's initiative to put the Kashmir genie back into the bottle, it became almost certain that a third party in the equation would like to put in a word. These are the assorted jihadi groups working at the behest of Pakistan's 'deep state'.

They did soon enough. In the early hours of June 27, they launched an unmanned aerial vehicle (UAV, or drone) attack on the Indian Air Force compound in the highly protected Jammu Airport. The two bombs that hit were not particularly destructive. Reportedly, two more drones, possibly headed to the airport, were detected and driven away.

In the medium was also the message: in the offence-defence war between the good guys and the bad, the latter still have some aces up their sleeves.

Fortunately, instead of hitting back at the presumed culprit, Pakistan, GoI has chosen to play it cool. For the present, at least, the 'deep state' provocation has not worked. But often it is a matter of chance. Had the bombs done more damage, the story may have been different.

Drones are not new to this part of the border. Khalistani extremists have used them in several sorties to drop explosives, weapons and drugs in Punjab and J&K since 2019. Most UAVs were launched close to the border and returned. But several have crashed, or were shot down. On May 21, the Border Security Force (BSF) found an AK-47, a pistol and some ammunition half a kilometre on the Indian side of the border in Samba area near Jammu.

In June, a drone carrying arms and ammunition was shot down in the adjacent Kathua area leaving behind debris, including GPS (global positioning system) devices, which indicated that it came from Pakistan.

The Jammu airport drones were most likely Chinese-made DJI Matrice 600 Pro Hexacopters, of the type used in Punjab earlier. They weigh about 10 kg with batteries, are 1.5 m or so at its broadest, and capable of taking a 5 kg payload. They are guided by electrical signals by an operator on ground who must be able to see the UAV all the time.

This would put the useful range of the devices at about 5 km. So, we can assume that they were controlled by an operator near the airport, may be the terrace of a house nearby, since the Pakistan border is too far from there for Pakistan to have been the origin of the strike.

Another interesting detail is that the two bombs used were not crude devices, but a shaped charge that was able to tear through a concrete slab on the roof of an IAF building. This, in turn, means that those who were involved were more knowledgeable about the use of explosives than the average militant operating in Kashmir.

In terms of capacity and capabilities, these improvised machines of war are different from the Predators and other military drones that can carry several missiles and are directed by operators sitting continents away.

Already, AI-enabled autonomous aerial and undersea drones, used individually or in swarms, are being factored into the war plans of many countries.

The Jammu attack's lesson is that in the era of hybrid war, civilian systems can be adapted for military use. Perhaps the most sensational strike by such UAVs was the one in which Yemen's Houthi rebels struck Saudi Arabia's oil storage facilities in September 2019, forcing the refinery and its associated facilities to shut down. Similar drones, often used in swarms, have targeted Russian military facilities in Syria.

Protecting against drone attacks is a well-developed field. Many companies have devised countermeasures, some are already deployed for VIP protection. The problem is that they cost much more money than the drone itself, and can protect a limited area. But protecting convoys or far-flung military facilities or, for that matter, civilian spaces like markets and stadia is an expensive proposition.

After this incident, there will be a temptation to ban drones or severely restrict their usage. This would be a mistake. Civilian drone technology is still in its infancy. But it has a vast potential for good — photography, surveys, monitoring pipelines and traffic, crop dusting, even delivering online shopping and food.

Technology should not be the issue. Smartphones have revolutionised our lives. But just because terrorists also use them, restricting or banning them is to cut your own nose to spite the face. The challenge is to turn it to your advantage where you can.



THE HINDU

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Relief and recompense

The judiciary did well to assert the rights of pandemic-hit workers and families

Editorial

It is a matter of relief and satisfaction that the Supreme Court has prodded the Union government to perform its statutory duty of fixing a compensation for the families of those who lost their kin to the COVID-19 pandemic. The order comes close on the heels of a slew of directions on registering the country's vast unorganised workforce and its army of inter-State labourers on a national database and ensuring that none of them went hungry. On the issue of making an ex gratia payment to those affected by the pandemic, a notified disaster under the Disaster Management Act, the Centre initially took the untenable stand that it lacked the financial resources to compensate for every COVID-19 death. However, it later admitted that it was not the adequacy of resources that made it avoid any compensation, but rather its decision to prioritise expenditure in response to the pandemic. It is indeed true that unlike more frequent disasters such as cyclones, earthquakes and floods, a pandemic that has hit every country is not a one-time calamity, but an ongoing and prolonged phenomenon. However, the Court has rightly found that this was not reason enough for the Government to evade its duty to include ex gratia assistance on account of loss of life in its guidelines for "minimum standards of relief" to those hit by the disaster. The Court correctly did not fix a compensation amount for each death, leaving it to a policy decision by the National Disaster Management Authority and the Centre.

In an earlier order, the Court dealt with the need for comprehensive registration of all inter-State and unorganised workers in the country. It is unfortunate that it needed a pandemic, and the resulting humanitarian, social and economic crisis for millions of workers, to give an impetus to the process. The Supreme Court, while disposing of suo motu proceedings on the miseries of migrant labourers, has now fixed a deadline of December 31 this year for all States and Union Territories to complete the process. The Centre has been given a deadline of July 31 to make available a portal for its National Database for Unorganised Workers (NDUW) project so that it may be used for registering unorganised workers across the country. However, the Union government, which was directed to make such a common module available to the States as far back as in August 2018, claimed the work on developing the portal was affected due to the fallout of the pandemic. The Court has pulled up the Union Labour Ministry for its “apathy and lackadaisical attitude” and directed that the process of registration should begin by July 31. The verdicts open up the possibility that the inter-State and unorganised workers will at last be able to reap the benefits of welfare laws enacted for them. These interventions signify the rejuvenation and assertion of a court seen as somewhat reticent until recently.



दैनिक भास्कर

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कोर्ट का फैसला तो सही पर अमल में कैसे आएगा

संपादकीय

राष्ट्रीय आपदा प्रबंधन कानून की धारा 12 कहती है कि आपदाओं में हुई मौत पर प्राधिकरण आश्रितों को न्यूनतम जीवन स्तर सुनिश्चित करने के लिए राहत संबंधी दिशानिर्देश जारी 'करेगा'। सरकार ने दलील दी कि शब्द 'करेगा' को अपरिहार्य न मानकर 'कर सकता है' मानना होगा। कोर्ट ने इस दलील को खारिज करते हुए कहा कि इसके शाब्दिक अर्थ दे कोई भी भटकाव पूरे कानून के उद्देश्य पर प्रश्नचिन्ह लगा देगा। यहाँ कोर्ट ने न्यायिक कौशल का परिचय दिया क्योंकि अगर कानून का तात्पर्य 'करेगा' शब्द को विवेक से तय करना बनाना होता तो इसकी जगह 'कर सकेगा' या प्राधिकरण को आपदा-पीड़ितों को राहत देने की शक्ति होगी ' लिखता। लिहाजा कोर्ट का आदेश कि कोरोना से मृत्यु पर मुआवजा देने के दिशानिर्देश छह हफ्ते पहले में तैयार हो, सही है लेकिन अमल में लाना असंभव। कई मामलो में मरीज का दूसरा आरटीपीसीआर नेगेटिव आया लेकिन उसके तीसरे दिन वह किडनी, हार्ट फेल, लंग्स से ऑक्सीजन की कमी या फेफड़ों के फैंबोइड्स से मर गया और डॉक्टर ने मौत का कारन एक्यूट रिनल इंजरी, इंटरक्रनियल हेमरेज या पल्मोनरी फाइब्रोसिस आदि लिख दिया क्योंकि उस समय वह कोविड नेगेटिव था। इसी परिभाषा के आधार पर 17 महीने तक, मृतकों का कोरणा से मृत्यु का सर्टिफिकेट नहीं मिला। दरअसल मरीज के परिजन भी तब नहीं चाहते थे कि कोरोना घोषित कर सरकार मरीज के शव का अंतिम संस्कार पीपीई किट से स्वयं करे। जो डॉक्टर मौत का कारण कुछ और लिख चुका है, क्या वह नए गाइडलाइंस के अनुसार फैसला बदलेगा? सरकार के लिए रास्ता कठिन है।



ड्रोन हमले ने बचाई खतरे की नई घंटी

दुष्यंत सिंह, (लेखक सेवानिवृत्त लेफ्टीनेंट जनरल हैं)



गत 26-27 जून की रात जम्मू एयरफोर्स स्टेशन पर दो धमाके सुनाई दिए। इन धमाकों से आसपास रहने वाले जम्मू शहर के लोग सहमे तो होंगे, पर यहां के लोगों ने बहुत आतंकी हमले डोले हैं और इसलिए वे शायद ही अचंभित हुए हों। जम्मू का एयरपोर्ट वायु और थल सेना की छावनियों के बीच स्थित है। इस कारण भारतीय थल सेना के सुरक्षाकर्मी भी इसके चारों तरफ तैनात रहते हैं। इसी कारण जम्मू हवाईअड्डे में जमीनी घुसपैठ कर हमला करना बहुत मुश्किल है। शायद यही कारण था कि एयरफोर्स बेस को हवाई मार्ग से ड्रोन द्वारा निशाना बनाने की कोशिश की गई। यह हमला एयरफोर्स स्टेशन के

टेक्निकल एरिया में हुआ, जिसमें एक इमारत की छत को हानि पहुंची और वायु सेना के एक वारंट अफसर एवं एक वायु सैनिक को मामूली चोट लगी। इस हमले का निशाना शायद टेक्निकल एरिया में खड़े सेना के हेलीकाप्टर थे। ड्रोन से हमला बहुत ही सस्ता और सुरक्षित तरीका है। इसमें हमला करने वालों के लिए जोखिम न के बराबर होता है। अगर यह हमला सफल हो जाता तो हमारा अत्यधिक नुकसान होता, साथ ही देश की साख को भी धक्का लगता। यह हमला शायद छोटे ड्रोन से किया गया। इस तरह के ड्रोन आसानी से एक जगह से दूसरी जगह ले जाए जा सकते हैं और उनका रडार द्वारा पता लगाना बहुत ही मुश्किल होता है। इस हमले का अंजाम और भी भयानक हो सकता था, अगर ड्रोन उच्च क्षमता के विस्फोटकों से लैस होते। मेरा अनुमान है कि अगली बार विस्फोटक की मात्रा और उसका प्रकार अलग होगा। अभी तो इस हमले में केवल दो ही ड्रोन इस्तेमाल किए गए। अगली बार शायद ज्यादा ड्रोन इस्तेमाल किए जाएं।

यह देखा गया है कि कई बार ड्रोन अपने विस्फोटक के साथ ही लक्ष्य से टकरा जाते हैं। इसे हम कामीकाजे ड्रोन हमला भी कहते हैं। दूसरे महायुद्ध में जापानी पायलट्स अपने हवाईजहाज को पानी के बड़े-बड़े जहाजों में जानबूझकर क़ैश करा देते थे, ताकि वे हर हाल में नष्ट हो जाएं। जम्मू एयरफोर्स स्टेशन पर हमले के बाद जिस तरह शहर में लगातार ड्रोन मंडराते दिख रहे हैं, उससे तो यही लगता है कि अगली बार पाकिस्तानी सीमा से लगे हवाईअड्डे जैसे श्रीनगर, उधमपुर, पठानकोट और अमृतसर निशाने पर हो सकते हैं। ड्रोन से आतंकी अपने साजो-सामान को बहुत आसानी से भेज सकते हैं। यह हमारे लिए खतरे की एक बड़ी घंटी है। इसकी अनदेखी नहीं कर सकते कि अतीत में ड्रोन के जरिये हथियार और नशीले पदार्थ भेजने की कोशिश की गई है। हमें तभी सतर्क हो जाना चाहिए था।

दुनिया में काफी दिनों से ड्रोन हमले हो रहे हैं। ये हमले स्टेट और नॉन स्टेट एक्टर्स, दोनों ही कर रहे हैं, पर भारत में किसी सैन्य ठिकाने पर ड्रोन हमला पहली बार हुआ है। अमेरिका, रूस, इजरायल, चीन और तुर्की ड्रोन के इस्तेमाल और उसकी तकनीक में बहुत

माहिर हैं। अमेरिका ने अफगानिस्तान और सीरिया में न जाने कितने आतंकियों को ड्रोन हमले के जरिये मारा है। इसी तरह तुर्की ने सीरिया के साथ-साथ अजरबैजान एवं आर्मेनिया की लड़ाई में इनका सफलतापूर्वक इस्तेमाल किया है। ड्रोन हमलों को नाकाम करने के लिए सर्विलांस, इंटेलीजेंस, इंटीग्रेटेड एयर डिफेंस की अत्यधिक आवश्यकता है। हमारा इंटेलीजेंस तंत्र अभी उतना सक्षम नहीं, जितना होना चाहिए। हमें लो लेवल रडार और आधुनिक नाइट विजन यंत्रों की भी सख्त जरूरत है, खास तौर पर सुरक्षा की दृष्टि से संवेदनशील ठिकानों पर। हमारे ऐसे ठिकानों पर अक्सर डिफेंस सर्विस कोर के व्यक्तियों की तैनाती होती है। ये जवान बहुत ही कर्तव्यपरायण होते हैं, पर उनकी उम्र ज्यादा होती है। इसलिए सीमावर्ती क्षेत्रों के महत्वपूर्ण ठिकानों पर वायु सेना को एक बेहतर फोर्स खड़ी करनी पड़ेगी, ताकि इस तरह के हमलों की काट की जा सके।

इसके अलावा हमारे पास इसकी भी क्षमता होनी चाहिए कि यदि हम ड्रोन को देख लें तो फिर उन्हें मार गिराएं। ड्रोन हमलों को नाकाम करने के लिए हम जैमर्स सरीखे इलेक्ट्रॉनिक सिस्टम का भी इस्तेमाल कर सकते हैं। दक्षिण कोरिया में एक आधुनिक जैमिंग सिस्टम का टेस्ट किया जा रहा है, जो छोटे ड्रोन हमले को नाकाम कर सकता है। इसी तरह ब्रिटेन के ब्राइटस्टार सर्विलांस सिस्टम ने पिछले साल सितंबर में एक नया रडार ए 800 3डी नाम से लांच किया है। यह छोटे ड्रोन को डिटेक्ट कर सकता है। विशेषज्ञों के मुताबिक इसे बॉर्डर मैनेजमेंट और मिलिट्री सिस्टम में आसानी से सम्मिलित कर सकते हैं। अमेरिका भी एक हाई एनर्जी लेजर सिस्टम पर काम कर रहा है, जिससे छोटे ड्रोन को नाकाम किया जा सकता है। इसी तरह जब ड्रोन एकदम नजदीक आ जाए, तब एक अन्य ड्रोन द्वारा ही उसे नष्ट करने के लिए इजरायल और अमेरिका ने मिलकर एक तकनीक विकसित की है। स्काईलार्ड नामक इस तकनीक में ड्रोन में एक जाल होता है, जो दुश्मन के ड्रोन को उसमें फंसाकर नाकाम कर देता है।

चूंकि इस तरह की उन्नत तकनीक को खरीदने या विकसित करने में समय लगेगा इसलिए हमें मशीनगन के जरिये ड्रोन को नष्ट करने की क्षमता विकसित करनी होगी। हालांकि यह इतना आसान नहीं है, पर अगर सही ट्रेनिंग दी जाए तो यह तरीका असरदार हो सकता है। जब तक ड्रोन नष्ट करने की तकनीक हासिल नहीं की जाती तब तक हमें पारंपरिक हवाई सुरक्षा के तरीकों को ही अमल में लाना होगा। ड्रोन हमलों की तुलना हम एक हवाई गुरिल्ला युद्ध से कर सकते हैं। इनकी काट भी एक गुरिल्ला युद्ध की तरह ही करनी होगी। यदि सीमा से लेकर संवेदनशील ठिकानों तक की हवाई और जमीनी सर्विलांस के साथ खुफिया तंत्र को मजबूत किया जा सके तो हमें ड्रोन हमलों से निपटने में काफी सफलता मिल सकती है।
