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On Track For 2070 Net Zero Target

India's clean energy transition is rapidly underway, benefiting the entire world

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India's announcement that it aims to reach net zero emissions by 50% of its electricity renewable energy sources by 2030 is a hugely significant moment for the global fight against climate change. India is pioneering a new model of economic development that could avoid the carbon-intensive approaches that many countries have pursued in the past – and provide a blueprint for other developing economies.

Ambitious targets

The scale of transformation in India is stunning. Its economic growth has been among the highest in the world over the past two decades, lifting millions of people out of poverty. The rapid growth in fossil energy consumption has also meant India's annual CO2 emissions have risen to become the third highest in the world. However, India's CO2 emissions per person puts it near the bottom of the world's emitters, and they are lower still if you consider historical emissions per person.

India's sheer size and its huge scope for growth means that its energy demand is set to grow by more than that of any other country in the coming decades. In a pathway to net zero emissions by 2070, we estimate that most of the growth in energy demand this decade would already have to be met with low-carbon energy sources. It therefore makes sense that Prime Minister renewable energy capacity, reducing the emissions intensity of its economy by 45%, and reducing a billion tonnes of CO2.

These targets are formidable, but the good news is that the clean energy transition in India is already well underway. It has overachieved its commitment made at COP21 in Paris by already meeting 40% of its power capacity from non-fossil fuels – almost nine years ahead of schedule – and the share of solar and wind in India's energy mix has grown phenomenally. Owing to technological developments, steady policy support and a vibrant private sector, solar power plants are cheaper to build than coal ones. Renewable electricity is growing at a faster rate in India than any other major economy, with new capacity additions on track to double by 2026. The country is also one of the world's largest producers of modern bioenergy and has big ambitions to scale up its use across the economy. The International Energy Agency (IEA) expects India to overtake Canada and China in the next few years to become the third largest ethanol market worldwide after the US and Brazil.

Navigating bumps in the road

However, even as it sets its sights on net zero, India faces a number of pressing near-term challenges. The sharp increase in commodity prices has made energy less affordable, and tight markets are increasing energy security risks for the world's third largest energy importer. There is still a lack of reliable electricity supply for many consumers. Continued reliance on traditional fuels for cooking causes unnecessary harm to many people's health. Financially ailing electricity distribution companies are impeding the urgent transformation of the sector. And high levels of pollution have left Indian cities with some of the poorest air quality in the world.

India already has numerous policy measures in place that, if fully implemented, could address some of these challenges by accelerating the shift to cleaner and more efficient technologies. A transition to clean energy is a huge economic opportunity. India is particularly well placed to become a global leader in renewable batteries and green hydrogen. These and other lowcarbon technologies could create a market worth up to $80 billion in India by 2030. Support from the international community is essential to help shift India's development onto a low-carbon path. To reach net zero emissions by 2070, the IEA estimates that $160 billion per year is needed, on average, across India's energy economy between now and 2030. That's three times today's investment levels. Therefore, access to low-cost long-term capital is key to achieving net zero.

Benefiting the people

Achieving net zero is not just about reducing greenhouse gas emissions. India's energy transition needs to benefit its citizens, and well-designed policies can limit the potential trade-offs between affordability, security and sustainability. Green hydrogen will play a major role in achieving net zero and decarbonising the hardto-abate sectors. India could easily create 5 million tonne green hydrogen demand thereby replacing grey hydrogen in the refineries and fertiliser sector. This 5 million tonnes will result in abatement of 28 million tonnes of CO2. This proportion will grow as we fructify green hydrogen economy and result in 400 million tonnes of CO2 abatement by 2050.

As a large developing economy with over 1. 3 billion people, India's climate adaptation and mitigation ambitions are not just transformational for India but for the entire planet.

THE HINDU

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Some Raj Bhavans are on the war path

The Governor must be mindful of being a friend and a guide to his government, more so in Opposition-ruled States

P.D.T. Achary, [Former Secretary General, Lok Sabha]

Recent media reports about the confrontation between the Governors and the State governments, in Maharashtra and Kerala, have turned the spotlight on the rather delicate relationship between the constitutional head of the State and the elected government. In Maharashtra, for example, the situation was indeed bizarre insomuch as the Governor refusing to accept the date of election of the Speaker recommended by the State government. Consequently, the Assembly could not elect the Speaker.

The situation in Kerala has been no less bizarre. The State Governor having reappointed the Vice Chancellor of Kannur University in accordance with the law, made an allegation against the Kerala government that he was under pressure from the Government to reappoint the Vice Chancellor. The Governor confessed that he had done the wrong thing by yielding to governmental pressure. He has added that he does not want to remain the Chancellor any more, though he holds this position in an ex-officio capacity which means that he would have to remain the Chancellor as long as he is the Governor. But the Governor remains adamant.

The Governor levelling allegations against his own government is not a first-time development. In West Bengal this has been a regular feature. Similarly, non-acceptance of the advice of the Council of Ministers too has been witnessed in Rajasthan as well as Maharashtra again. Of course, there have been differences between Governors and Chief Ministers in the past too, but these have been rare occurrences. But the open confrontations now clearly cross the boundaries of what is constitutionally permissible behaviour.

With discretionary powers

The relationship between the Governor and Chief Minister has, even at the best of times, not been absolutely simple and tension free. It has something to do with the whole idea of the office of the Governor and its past history. In the colonial era, the Governor was the absolute ruler of the province who was answerable ultimately to His Majesty, the King. A closer look at the debates in the Constituent Assembly on the Governor would reveal that there were divergent views on the powers to be given to the Governor. In fact, there were members in the Assembly who wanted the Governor to be as powerful as the colonial-era Governors. Though B.R. Ambedkar was clear that the Governor should only be a constitutional head and the executive power should vest entirely in the elected government, he promoted the idea of vesting certain discretionary powers in the Governor. In this respect he was guided by the thinking that the State governments are in subordination to the Union government and, therefore, the Governor should be given discretionary powers to ensure that they act so.

So, ultimately, the Governor who emerged from the Constituent Assembly was one with certain discretionary powers prescribed by or under the Constitution unlike the President of India who has not been given any such powers. Further, Article 163 (Article 143 in the draft Constitution) became a 'blind reproduction of Section 50 of the Government of India Act 1935' (H.V. Kamath). This exact reproduction of the provision in the Act of 1935 has, to a great extent, introduced a vagueness about the actual powers of the Governor vis-à-vis the elected government in democratic India which was corrected only with the

Supreme Court of India stating the law in unambiguous terms in Shamsher Singh (1974). From Shamsher Singh to Nabam Rebia (2016) the top court declared that the Governor can, in the exercise of executive power of the state, act only on the aid and advice of the Council of Ministers "...save in a few well-known exceptional situations".

The Maharashtra case

The Maharashtra Governor's refusal to accept the date of election of the Speaker goes against the principles of constitutional government. It must be stated here that the Constitution has not assigned any role to the Governor in the election of the Speaker under Article 178, which is exclusively the job of the House. It is only the House rule which says that the Governor shall fix the date. The date as such has no great significance. Under the procedure followed in all Assemblies, the government fixes the date and conveys it to the Secretary of the Assembly who forwards it to the office of the Governor for his signature. After the date is formally approved by the Governor — which he is duty bound to do — the members are informed about it.

Now the question is if the Governor does not approve the date, can the election be held? Fixing the date by the Governor is not of any constitutional importance; election by the House is the important thing. So, if the Governor stands in the way of the election, the only way open to the House is to amend that particular rule which empowers the Governor to fix the date. It can provide that the Secretary on receiving the date from the government shall notify the members of the same. The election can be held either through secret ballot or through a motion in the House as is done by the Lok Sabha. But it must be said that it could be for the first time in the history of free India that a Governor has refused to fix the date of election of the Speaker and, consequently, the election could not be held. The Maharashtra Assembly is now without a Speaker being in office.

In Kerala

The Kerala situation is even more curious. There, the controversy surrounds the reappointment of the incumbent Vice Chancellor of Kannur University. There was a suggestion from the State government routed through the Pro Chancellor who is the Minister for Higher Education for the reappointment of the incumbent Vice Chancellor. The Governor being the ex-officio Chancellor of the university and the appointing authority, accepted the suggestion and reappointed him. After some time, the Governor went public with a serious allegation that he had signed the order of appointment under pressure from the Government and that he had done the wrong thing by reappointing the Vice Chancellor under pressure.

It must be stated here that the Governor had acted perfectly in accordance with the law in reappointing the incumbent Vice Chancellor. Under the University Act, an incumbent Vice Chancellor is eligible for reappointment. Since the Act does not lay down any specific procedure for reappointment, the Chancellor was right in accepting the suggestion or the recommendation made from the Government. In fact, he or she can accept suggestions from any person including the Leader of the Opposition in the Assembly. The point worth noting here is that the Governor as Chancellor is not required to act on the advice of the Council of Ministers in the matter of appointment of Vice Chancellor and others in the university. He can act absolutely independently. He could also have rejected the suggestion from the Government.

The Kerala High Court has clarified this legal point in Gopalakrishnan vs Chancellor, University of Kerala. So the Governor of Kerala needs to apply his mind independently to the case of reappointment, evaluate

the performance of the Vice Chancellor and fully satisfy himself about the merit of the appointee before signing the appointment order. It is presumed that he had done this. Therefore, it is baffling why he chose to go public and level serious allegations against the Government and incriminate himself in the process. Adding to the confusion, the Governor has divested himself of the ex-officio charge of Chancellor and declared that he will not be functioning as Chancellor. Needless to say, one cannot relinquish a charge which he holds in an ex-officio capacity unless he leaves his substantive post.

Detachment is the essence

These are very bizarre situations indeed. The Governor is a high constitutional authority. He needs to function within the four walls of the Constitution and be a friend, philosopher and guide to his government. The Constitution does not allow him to be a parallel government; nor does it make him personally responsible for his actions as Governor. That such confrontations take place only in Opposition-ruled States shows that political expediency has overtaken constitutional propriety. Wading through the Constituent Assembly debates, one comes across these wise words of Pandit Thakur Das Bhargava, a conscientious member of the Assembly: "He (Governor) will be a man above party and he will look at the minister and government from a detached stand point". Detachment is the essence of India's ancient culture. But Pandit Thakur Das's voice has ended up as a voice in the wilderness.

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Control rather than privacy

The Joint Committee report on the Personal Data Protection Bill has raised more questions than it has solved

Jaiveer Shergill, [Supreme Court lawyer and National Spokesperson, the Indian National Congress]

In India, where the personal data of citizens are at the mercy of companies and government and where is no privacy law, the Puttaswamy judgment and the Justice B.N. Srikrishna committee report that led to the Personal Data Protection Bill of 2019 came as a ray of hope. But the Joint Committee report on the Bill has failed to provide a robust draft legislation ensuring the privacy of citizens. Instead, it has carved out an architecture for a surveillance state.

Infallibility of state

Under the Constitution, fundamental rights are enforced against the state and its instrumentalities and not against private bodies. The Puttaswamy judgment held that the right to privacy is a fundamental right. However, the report has divided the digital world into two domains — government and private — and is based on the presumption that the question of right to privacy emerges only where operations and activities of private entities are concerned. Clause 12 of the Bill provides exemptions for the government and government agencies and Clause 35 exempts government agencies from the entire Act itself. Clause 12, which says personal data can be processed without consent for the performance of any function of the

state, is an umbrella clause that does not specify which ministries or departments will be covered. Further, the Bill says, "harm includes any observation or surveillance that is not reasonably expected by the data principal". This means if you install any software in your computer and the software violates the principle of privacy and data get leaked, the complaint of the data principal will not be legally tenable as the defence will be that 'once you have installed the software, you should have reasonably expected this level of surveillance'. The government can use these provisions as a means of control and surveillance.

If private entities can be given a transition time to comply with the Act, why should the same not be extended to government entities? Why should they be given blanket exemption instead? The Committee has failed to provide formidable firewalls to protect the privacy of individuals and has also carved out a mechanism for government control over personal data. The provisions are ultra vires of the judgment on privacy.

For compliance with the provisions of the Act, a data protection authority (DPA) has to be appointed. The Bill elaborates on the functions and duties of the DPA. It is doubtful whether a single authority will be able to discharge so many functions in an efficient manner. The terms and conditions of appointment of the DPA also raise concerns. Unlike the Justice Srikrishna committee report which provided for a judicial overlook in the appointments of the DPA, the Bill entrusts the executive with the appointments. Although the report expanded the committee, the power to appoint the panelists vests with the Central government. While ensuring the protection of citizens' fundamental right, it is necessary that the authority entrusted with the responsibility should work independently. Clause 86 says, "Authority should be bound by the directions of the Central Government under all cases and not just on questions of policy". This makes the DPA duty-bound to follow the orders of the government. This weakens its independence and gives the government excessive control. Further, the appointment of the authority violates the principle of federalism. There is internal data flow and the States are key stakeholders in the process. Even if the proposed central authority issues directions to allow processing of data on the grounds of 'public order', it is important to note that 'public order' is an entry in the State List. If the pith and substance of the legislation are related to the State, then it has to be monitored by the State Data Protection Authority.

Economic cost of non-personal data

One of the objectives of the Bill is to promote the digital economy. But by including non-personal data within the ambit of the Bill, the Joint Committee has put a huge compliance burden on the economy. This will hit the MSME sector and small businesses harder as technical processes involving data-sharing are very expensive. The government-constituted panel headed by S. Gopalkrishnan also opposed the idea of including non-personal data in the Bill. Mandatory data localisation, it is estimated, will squeeze the economy by 0.7-1.7%. This may also invite similar measures by other sovereign countries which will hamper smooth cross-border flow of data.

The report has raised more questions than it has solved. In its present avatar, the Bill is more about surveillance and control than privacy. At the time of passage of the Bill, loopholes must be plugged so that India can have a robust data protection law.

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Who should be the Chancellor?

A Governor can discharge the allotted functions as a Chancellor in a detached manner

T. Ramakrishnan

Tamil Nadu Chief Minister M.K. Stalin's announcement last week that his government was exploring options to empower itself to make the appointment of vice chancellors of universities, taking the powers away from the Governor-Chancellor, was not unexpected. Though no major issue has erupted in the area of higher education between the State government and Governor R.N. Ravi, the equations between the two have not been good. Even three months after the Assembly adopted a Bill to scrap the National Eligibility-cum-Entrance Test as the sole guiding factor for admission to undergraduate medical courses, Mr. Ravi has not yet forwarded it to the President. Mr. Stalin has complained that even after he met and requested Mr. Ravi to take this up, the Governor has not taken any action. It was against this backdrop that Mr. Stalin made the announcement.

The move appears to be in line with developments in some other States. In December, the Maharashtra legislature adopted a Bill curtailing the powers of the Governor in the appointment of vice chancellors in State universities. Around the same time came a statement from the West Bengal government that it was considering a proposal to make the Chief Minister Chancellor of all State universities. In the light of a controversy over the selection of vice chancellors for two universities, Kerala Governor Arif Mohammed Khan had even suggested that a special session of the Assembly be held to divest him of the charge of Chancellor of universities in the State.

In case the Tamil Nadu Assembly adopts a Bill replacing the Governor with the Chief Minister as Chancellor of universities, this will be the second such instance in the State. In January 1994, when the AIADMK was in power, the House passed the Universities Bill, making the Chief Minister Chancellor of universities. The immediate provocation for it was the souring of ties between the then Governor, M. Channa Reddy, and the then Chief Minister, Jayalalithaa, over the appointment of the Vice Chancellor of the Madras University. Though it was another matter that Reddy did not give his assent to the Bill till the end, it must have been amusing for him as he, in his second spell as Chief Minister of undivided Andhra Pradesh in 1989-90, himself got relieved of the post of Chancellor of the Telugu University and Health Sciences University, the position held by his immediate predecessor N.T. Rama Rao. Eventually, it was left to the DMK regime to withdraw the Bill.

A former civil servant, who had served in a senior position in the Department of Higher Education at the Centre, points out that the President is the Visitor of a number of central institutions, including the National Institutes of Technology, and has got certain functions to perform, but no controversy arises between the occupant and the institutions. However, the situation is not the same when it comes to universities in States and Governor-Chancellors. Though there is nothing inherently superior in the arrangement of Governor being Chancellor vis à vis that of Chief Minister as Chancellor, a Governor is in a position to generally discharge the allotted functions as a Chancellor in a detached manner, uninfluenced by local and political considerations.

Notwithstanding the merits and demerits of who should be Chancellor of universities, what public-spirited academicians expect Mr. Ravi to do as Governor-Chancellor immediately is to ensure transparency in the appointment of vice chancellors. All the details regarding applicants, composition of the jury panel, interviews, and the factors that guided him or his predecessor in the appointments made in the last four-five years should be hosted on the website of the Raj Bhavan.

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स्वच्छ ऊर्जा की ओर

संपादकीय

विज्ञान की एक खबर या उसके प्रचार ने पूरी दुनिया को अचंभित कर दिया। ऐसा लगा, मानो चीन ने कृत्रिम सूरज बना लिया हो, इसे प्रचारित भी ऐसे ही किया गया। परमाणु मिश्रण जिसे प्लाज्मा भी कहा जा रहा है, के सहारे सूरज से पांच गुना तापमान को 17 मिनट से अधिक समय तक बनाए रखकर विश्व रिकॉर्ड का दावा किया गया है। चीन से पहले फ्रांस ने यह प्रयोग साल 2003 में किया था, जिसमें लगभग इतने ही तापमान को 390 सेकंड तक कायम रखा गया था। पिछले वर्ष मई में चीन ने एक छोटा प्रयोग किया था और इतने ही तापमान को 101 सेकंड तक कायम रखा था। चूंकि इन दिनों चीन की पूरी कोशिश खुद को सुपर पावर के रूप में स्थापित करने की है, इसलिए वह हर क्षेत्र में रिकॉर्ड बनाने के जुनून के साथ जुटा हुआ है। बेशक, पिछले वर्षों में चीन की वैज्ञानिक तरक्की काबिलेगौर है, लेकिन उसके प्रयोगों को अमेरिका या यूरोप की तरह विश्वसनीयता हासिल नहीं है। चीन को विश्वसनीयता बढ़ाने के लिए कई कदम उठाने पड़ेंगे।

बहरहाल, ऐसे प्रयोग को दूसरा सूरज या कृत्रिम सूरज बनाने का नाम देना बिल्कुल गलत है। प्रयोग की प्रवृत्ति भले सूरज से थोड़ी मिलती-जुलती हो, लेकिन आकार-प्रकार में इस प्रयोग का सूरज से दूर-दूर तक कोई मुकाबला नहीं है। हम दूर-दूर तक भविष्य में भी कोई ऐसा कृत्रिम सूरज बनाने नहीं जा रहे हैं, जिसे आसमान पर सजा दिया जाए और जिससे पूरी दुनिया लाभान्वित हो। अत: अव्वल तो वैज्ञानिकों को अतार्किक दावों या नामकरण से बचना चाहिए और ऐसे प्रयोगों की वास्तविक व्यावहारिकता को परखना चाहिए। तो फिर फ्रांस या चीन में हुए प्रयोग के क्या मायने हैं? चाइनीज अकादमी ऑफ साइंसेज के इंस्टीट्यूट ऑफ प्लाज्मा फिजिक्स के एक शोधकर्ता गोंग जियानजू ने अपने एक बयान में कहा है कि

हालिया अभियान एक फ्यूजन रिएक्टर चलाने की दिशा में ठोस वैज्ञानिक और प्रयोगात्मक नींव रखता है। वास्तव में वैज्ञानिक परमाणु संलयन की शक्ति का दोहन करने की कोशिश कर रहे हैं। यह ठीक वैसी ही वैज्ञानिक प्रक्रिया है, जिससे तारे 70-70 साल तक चमकते या जलते रहते हैं।

मोटे तौर पर अगर समझा जाए, तो यह प्रयोग परमाणु ऊर्जा का ही अगला संस्करण है। ऐसे प्रयोग के माध्यम से कोशिश हो रही है कि ज्यादा से ज्यादा ऊर्जा बनाई जाए। चूंकि ऐसे प्रयोग या उद्यम से स्वच्छ ऊर्जा हासिल होगी, इसलिए इसका महत्व खास हो जाता है। इस ढंग से अगर ऊर्जा का निर्माण हो, तो रेडियोधर्मी कचरे के उत्पादन से भी बचा जा सकता है। बदलते समय के साथ ज्यादा से ज्यादा स्वच्छ ऊर्जा की जरूरत बढ़ती चली जा रही है, लेकिन वास्तव में ऐसे प्रयोग को व्यावहारिक बनाने की जरूरत है। फायदा तब है, जब इस सपने को जमीन पर उतारा जाए। इसमें कोई शक नहीं कि दुनिया प्रकृति अनुकूल स्वच्छ ऊर्जा की तलाश में है, लेकिन विकसित होने का दावा करने वाले देशों के मन में क्या चल रहा है? दुनिया के विशाल देश अगर ईंधन के रूप में तेल या कोयले की बचत कर सकते हैं और ऐसे प्लाज्मा प्लांटों से पर्याप्त ऊर्जा पा सकते हैं, तो उनका स्वागत है, लेकिन हकीकत यह है कि ऊर्जा की यह मंजिल अभी दूर है। इस प्रक्रिया से स्थाई ताप उत्सर्जन अभी कोशिश के दौर में ही है।

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संविधान की छाया में मिलकर आगे बढ़ने की जरूरत

विजय कुमार चौधरी, (शिक्षा व संसदीय कार्यमंत्री, बिहार)

पिछले दिनों विजयवाड़ा स्थित सिद्धार्थ लॉ कॉलेज के एक कार्यक्रम में 'भारतीय न्यायपालिका : भविष्य की चुनौतियां' विषय पर बोलते हुए प्रधान न्यायाधीश एनवी रमना ने न्यायपालिका से जुड़े कुछ मुद्दों पर देश का ध्यान आकर्षित किया। कार्यपालिका द्वारा न्यायिक आदेशों की लगातार अनदेखी व अवहेलना पर उन्होंने चिंता प्रकट की। उन्होंने यह भी कहा कि लगता है, न्यायपालिका के प्रति असम्मान व अनादर का भाव पनप रहा है और बिना विधायिका व कार्यपालिका के सहयोग के न्यायपालिका अपना दायित्व नहीं निभा सकती।

विधायिका और कार्यपालिका पर तंज कसते हुए न्यायमूर्ति ने कहा कि न्यायपालिका के पास अर्थ या बल की ताकत नहीं है, परंतु इसे महत्वपूर्ण दायित्व निभाना है। न्यायिक समीक्षा के अधिकार को रेखांकित करते हुए कहा कि इसके बिना प्रजातंत्र की कल्पना नहीं की जा सकती है। उनके मुताबिक, मीडिया बिना सही-गलत, असली-नकली का फर्क समझे बातों को बढ़ा-चढ़ाकर प्रचारित करता है। लोक अभियोजकों को सरकार की कठपुतली बताते हुए उनकी चयन-प्रक्रिया को भी न्यायालयों को सौंपने की वकालत की। और तो और, भारत में न्यायाधीशों की नियुक्ति न्यायाधीशों द्वारा किए जाने की बात को एक बहुप्रचारित मिथक बताते हुए उन्होंने कहा कि इस प्रक्रिया में केंद्र सरकार, राज्य सरकार और उच्च न्यायालय के कॉलेजियम इत्यादि शामिल होते हैं। इतने संवेदनशील तथ्य जब भारत के प्रधान न्यायाधीश ने उठाए हैं, तो इन पर विचार लाजिमी है। भारतीय प्रजातांत्रिक व्यवस्था में सार्वभौमिकता देश की जनता में निहित होती है, जिसका उपयोग वह अपने प्रतिनिधियों के माध्यम से करती है। निर्वाचित प्रतिनिधियों से गठित विधायिका का काम जनहित में कानून बनाना

होता है। कार्यपालिका विधायिका के प्रति जिम्मेदार होती है। संविधान की मूल भावना देश में तीनों अंगों को मिलकर सबको सुरक्षा देना व कानून का शासन लागू करना होता है। सरकार के तीन अंगों में से किसी दो का एक के प्रति निष्ठा भाव या किसी एक द्वारा दो के विरुद्ध उच्चता अथवा उत्कृष्टता का भाव संविधान सम्मत व वांछनीय नहीं है।

संविधान में न्यायिक स्वतंत्रता का आशय उसकी स्वतंत्र, निष्पक्ष व दबावमुक्त कार्यशैली से है। संविधान निर्माताओं को शायद आशंका थी कि विधायिका या कार्यपालिका द्वारा उसे प्रभावित करने की कोशिश हो सकती है। ऐसी स्थिति का प्रभावकारी ढंग से निषेध किया गया। इसे न्यायिक समीक्षा व पुनरावलोकन का अधिकार देकर दूसरे अंगों के पथ विचलित होने पर रोकने का भी अधिकार दिया गया। धीरे-धीरे न्यायिक सक्रियता बढ़ती गई है। न्यायपालिका के अधिकारों को रेखांकित करते समय संविधान सभा ने इसे लेकर पूरी सजगता दिखाई थी। डॉक्टर आंबेडकर सहित सभी सदस्य सहमत थे कि न्यायपालिका को 'राज्य के अंदर राज्य' नहीं बनना चाहिए। ए कृष्णा अय्यर ने कहा था कि न्यायपालिका की स्वतंत्रता ऐसी नहीं होनी चाहिए कि वह उच्च विधायिका या उच्च कार्यपालिका के रूप में काम करने लगे।

दूसरी बात, यह स्पष्ट है कि सिर्फ भारतीय व्यवस्था में ही न्यायाधीशों द्वारा न्यायाधीशों की नियुक्ति की जाती है। अनुच्छेद 124 व 217 के मुताबिक, उच्चतम व उच्च न्यायालय के न्यायाधीशों की नियुक्ति राष्ट्रपति द्वारा की जानी है और आवश्यक समझें, तो वह देश के प्रधान न्यायाधीश से परामर्श कर सकते हैं। परामर्श की प्रक्रिया को अपने ढंग से परिभाषित करते हुए न्यायपालिका ने अपने परामर्श व सुझाव को बाध्यकारी श्रेणी में डाल दिया है। कॉलेजियम का जिक्र संविधान में न होने के बावजूद न्यायपालिका द्वारा इसे मुस्तैदी से लागू किया जा रहा है।

निस्संदेह, कई मामलों में न्यायपालिका ने पारदर्शिता व उत्तरदायित्व के सिद्धांत को मुस्तैदी से लागू कराया है। पर आश्चर्य की बात है कि वह कोर्टरूम की कार्यवाही हो या कॉलेजियम-विमर्श, इसे सार्वजनिक नहीं करना चाहती। इसे सूचना के अधिकार की परिधि में नहीं जाने देना चाहती है। न्यायिक स्वतंत्रता सर्वस्वीकार्य है, मगर विधायिका या कार्यपालिका भी भूमिका पर प्रश्नचिह्न खड़ा कर प्रजातंत्र को मजबूत नहीं किया जा सकता। जब सरकार के तीनों अंग एक-दूसरे के अधिकारों व मर्यादाओं का बिना अतिक्रमण किए आपसी समझदारी से कार्य करेंगे, तभी भारतीय जनतंत्र सफल हो सकेगा।