

O HERALDO

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Apex Court has put a judicial check on executive overreach

The Supreme Court of India has drawn a bold and necessary line in the sand that is sure to have an impact on governance at a fractious time in Indian politics. In a landmark judgment, the Apex Court declared Tamil Nadu Governor RN Ravi's delay and subsequent withholding of assent to 10 re-passed bills as "erroneous in law and non-est". In effect, the court has reasserted the foundational principle that no constitutional authority, however high, is above accountability to the rule of law.

The judgment, delivered by Justices JB Pardiwala and R Mahadevan, not only sets aside the Governor's actions but also nullifies the consequential steps taken by President Droupadi Murmu, who had withheld assent to the same bills. Exercising its extraordinary powers under Article 142 of the Constitution, the court has deemed these 10 bills as having received assent as of November 18, 2023 - the date they were re-submitted to the Governor after being passed for a second time by the Tamil Nadu legislature.

This decision is as historic as it is unprecedented. For the first time, the Supreme Court has explicitly imposed a three-month time frame for the President to act on bills referred by Governors under Article 201. Equally significant is the court's affirmation that such actions by the President are justiciable - subject to judicial review - a necessary evolution in ensuring that the constitutional process is not subverted by political motivations or inertia.

At its core, this case underscores a long-festering constitutional dilemma - the misuse or non-use of gubernatorial powers in a federal structure. Governors, intended as impartial constitutional functionaries, have increasingly become flashpoints in Centre-State relations, often accused of stalling the legislative agenda of Opposition-ruled states. The Tamil Nadu Governor's extended silence and eventual reservation of bills to the President, without cogent constitutional reasons, is an example of this trend.

The court's judgment sends a clear message: constitutional offices must operate within the bounds of reason, transparency, and accountability. The absence of a statutory time limit in Articles 200 and 201 does not translate into unchecked discretion. As the judgment wisely observes, "even where no time-limit is prescribed for the exercise of any power under a statute, it should be exercised within a reasonable time." Reasonable governance is, after all, a cornerstone of any constitutional democracy.

Further, the court decisively rules out the idea that the Governor or President can use political expediency or personal dissatisfaction as grounds to withhold or delay assent. Such decisions, the court emphasised, must rest solely on clearly defined constitutional grounds—such as peril to democratic principles—with properly recorded and communicated reasons. The idea that high constitutional functionaries can act as political gatekeepers has been rejected firmly, and rightly so.

The implications of this ruling are wide-ranging. First, it fortifies the principle of cooperative federalism. No state should be held hostage to partisan calculations emanating from the Centre. When Governors or Presidents reserve bills indefinitely or act arbitrarily, they erode the authority of elected legislatures and thereby diminish the will of the people. By holding these actions accountable to judicial scrutiny, the Supreme Court restores a sense of balance and respect between the Union and State governments.

Second, this judgment marks a strong assertion of judicial oversight. The ruling reiterates that questions of constitutionality must be dealt with by the courts, and not the executive. If a bill is suspected of violating the Constitution, the appropriate course is to refer it to the Supreme Court under Article 143, not to indefinitely delay its passage under the pretext of procedural discretion.

Third, it reaffirms the idea of limited government, emphasising that the executive cannot act with impunity. If a Governor or the President withholds assent without offering constitutionally sound and recorded justifications, their actions are not immune from challenge. The court's invocation of Dr BR Ambedkar's warning - that even a good Constitution can be subverted by bad actors - is a poignant reminder of the vigilance required to protect democratic institutions.

Critics, including the Centre, are reportedly preparing to file a review petition, citing that the President's views were not represented in the case. Some claim the ruling amounts to judicial overreach, especially the court's use of Article 142 to deem bills as assented without formal signatures. However, such extraordinary measures were necessitated by extraordinary delay and obstruction. Constitutional silence cannot be interpreted as a licence to stall governance.

This judgment is a reminder that the Constitution is not a mere document to be selectively interpreted, but a living charter of accountability, duty, and democratic faith. In doing so, the Supreme Court has once again positioned itself as the final bulwark against arbitrary power - and as a guardian of India's constitutional soul.

comment



VENAN BONAVENTURE DIAS

Goa Government and its interpretation of illegal, unauthorised and irregular constructions

In the world of construction in urban or rural development, terms like "illegal," "unauthorised," and "irregular" often make headlines. These classifications highlight varying levels of non-compliance with laws and standards. Illegal construction refers to activities that blatantly violate the law, such as building without permits or defying zoning regulations. Unauthorised actions involve a lack of formal approval, such as unapproved property alterations or trespassing into restricted zones. Meanwhile, irregularities often stem from deviations from accepted norms, like inadequate paperwork or neglecting essential safety protocols. Together, these issues underscore the need for greater regulatory vigilance in the sector.

The Chief Minister of Goa recently stated that only irregularities in houses constructed on private properties may be regularised. However, structures built on Comunidade or government land will be deemed illegal, prohibited, and, if constructed, will face demolition in the future.

Certain questions remain unanswered regarding the laws that govern construction in Goa, including:

a. The Goa Panchayat Raj Act, 1994, with its sections and sub-sections clearly outlining what constitutes illegal constructions.

b. The Goa (Regulation of Land Development and Building Construction) Act, 2008, along with the Goa Land Development and Building Construction Regulations, 2010, which define construction parameters and address health regulations.

c. The Code of Comunidade, with its provisions explicitly stating what constitutes illegal construction on Comunidade land.

The repeated extensions and amendments introduced by the Government of Goa are causing significant public unrest, as they seem to encourage construction-related violations rather than deter them



Given that these legacy laws are already in place and government officials are entrusted as their custodians, the lack of clarity in addressing such issues is concerning.

What led individuals to disregard these laws and engage in illegal constructions across Goa? The answer undoubtedly lies in the corruption within various departments. While the Chief Minister acknowledges the prevalence of past illegalities and promises to prevent such actions in the future, a pressing question remains: Will

the corrupt officials responsible for facilitating these illegal constructions be held accountable and suspended? Does this suggest that those who followed the law were naive or unwise, while violators are rewarded for their actions? This conundrum is difficult to comprehend. If the Chief Minister fails to take action against corrupt officials who enabled and supported these illegalities, it perpetuates a system that allows unauthorised constructions to thrive. The Chief Minister must refrain from regularising any illegal constructions, as the Hon'ble Supreme Court of India, the apex judicial authority, has clearly outlined guidelines against unauthorised and illegal constructions. It is evident that no individual or government stands above the Hon'ble Supreme Court of India.

Furthermore, a state government does not have the authority to overrule the Hon'ble Supreme Court or enact legislation that contradicts its rulings. The Supreme Court, as the highest judicial authority in India, holds the power to interpret the Constitution.

Any laws introduced by state governments must align with constitutional principles and cannot conflict with the decisions or directives issued by the Hon'ble Supreme Court. If a state's legislation is found to diverge from the Constitution or Supreme Court rulings, it can be challenged in court and deemed unconstitutional. Under Article 131 of the Constitution, the Hon'ble Supreme Court exclusively possesses the jurisdiction to resolve disputes between states and the Central government.

The Goa Regularisation of Unauthorised Construction Act, 2016, along with its latest amendments, stands in contradiction to the directions of the Hon'ble Supreme Court of India. The Act is inherently ambiguous, as it empowered the regularisation of unauthorised constructions despite the existence of parallel legislation such as the Goa Panchayat Raj Act, 1994, the Goa (Regulation of Land Development and Building Construction) Act, 2008, the Goa Land Development and Building Construction Regulations, 2010, and the Code of Comunidade. These legacy laws, which were already in force and aligned with the Constitution of India, appear fundamentally at odds with the provisions of the 2016 Act, raising questions about its enforceability amidst conflicting frameworks.

For instance, the Goa Regularisation of Unauthorised Construction Act, 2016, falls under the purview of the Revenue Department, which primarily deals with land-related matters. This contrasts with the technical aspects of construction, which are overseen by the Town and Country Plan-

ning (TCP) Department and the Block Development Officer (BDO) under the Directorate of Panchayat, supported by specialised technical teams. This raises the question: how can the Revenue Department be entrusted with decisions regarding construction-related illegalities?

The repeated extensions and amendments introduced by the Government of Goa are causing significant public unrest, as they seem to encourage construction-related violations rather than deter them. These amendments effectively reward those who break the rules. If officials from the Directorate of Panchayats, Collectors, Secretaries of Panchayats, TCP officials, and Health officers, who facilitated these illegalities through neglect of their duties and non-enforcement of existing laws, are not held accountable or suspended, the government loses its justification to regularise such constructions.

What is the government's stance when a violator, on their private property, manipulates the system by first constructing a shed, obtaining a house number with the support of Panchayat officials, and later builds a bungalow by falsely presenting a photo of another house while deliberately forging documents in collaboration with officials, including the collector? Will the government reward such violations by regularising these structures and endorsing such unlawful actions? Would this not amount to concealing the crime under the guise of the Goa Regularisation of Unauthorised Construction Act, 2016, and its subsequent amendments?

The Goa Government must exercise caution to ensure that the legacy laws governing land are not misinterpreted or contradicted by its actions, particularly in light of the directions issued by the Hon'ble Supreme Court of India. Repeated discussions about amendments by the government have allowed violators, who knowingly engaged in illegal constructions despite existing regulations, to escape accountability. This has created a domino effect, resulting in jurisdictional overreach and setting a harmful precedent for other villagers to emulate, further highlighting the authorities' inability to address such violations effectively. Therefore, those who have breached legacy laws, even on private property, must be dealt with strictly in accordance with the laws in force. Extending undue sympathy to such violators could invite judicial scrutiny, potentially opening Pandora's box for further legal challenges and repercussions.

(Venan Bonaventure Dias is an educational and social entrepreneur vocal on issues related to governance, poverty, education, health-care, and environmental conservation.)

people's edit

UNDERSTANDING OUR COMUNIDADES ON GAUNKARY DAY

LUIS ANTONIO DE SOUZA & JOCEL DE SOUZA

Goa's Comunidades are ancient village-based social structures with deep ancestral roots and rich heritage, representing a collective system of social, economic, and administrative cooperation that has existed since the earliest times.

To understand the origin and nature of the Comunidade system, we must consider the transition from hunter-gatherers to settled agriculturalists. These early communities were deeply connected to nature, settling in fertile lands and turning Terra Nullius into productive agricultural zones. These settlements defined territories (Terra Firma), giving rise to distinct village communities.

Today, original settlers are often called First Nations or Indigenous Peoples. Similarly, the Comunidades of Goa and their Gaunkars can be seen as early social communes whose traditions, customs, and practices have shaped the relationship between people, ancestral lands, and waters.

This bond is captured in the saying: "We do not own our lands; our lands own us."

In Goa, this relationship is protected by Diploma Legislativo No. 2070, the Código das Comunidades (Code of Comunidades), consolidating the governance structures of these village communities.

Chapter 1 outlines the principles of justice, stability, and security governing the Comunidades. The preamble emphasises that the proper functioning of these institutions depends on legal frameworks and the moral integrity of those who oversee them, from Governors General and Administrators to Secretaries, Escrivaões, Gaunkars, and other members.

Chapter 2 highlights the complexity of relationships within the Comunidade system, acknowledging the challenges of balancing diverse interests.

Cunha Rivara (1809-1879), a scholar, historian, and advocate for the Konkani language, was an early defender of the Comunidade system. As Secretary of the Portuguese Estado da Índia, he fought for the preservation of Comunidades, as documented in his *Brados a Favor das Comunidades das Aldeias do Estado da Índia*.

Chapter 3 of the Code affirms that the properties of the Comunidades belong to them, a right reaffirmed in Chapter 7, where the dissolution of Comunidade property is strictly prohibited.

The Code makes clear that the identity of the Gaunkary (Comunidade) is inseparable from its lands, recognized as Allodial (freehold) and held Ab Initio (from the beginning).

In a High Court of Bombay at Goa judgment on July 26, 2024, the court highlighted the beauty of the Comunidade governance system and the government's duty to prevent misuse or alienation of Comunidade property, stressing that the Code must be strictly enforced.

Tracing Goa village settlements requires deeper research, but historical evidence, such as copper plate inscriptions from the Kadamba dynasty (1099 CE) and the construction of bunds (embankments), supports the presence of such cooperative institutions.

The arrival of the Portuguese introduced new documentation practices. The *Foral* of 1526, written by Afonso Mexia, formally recognised the customs and practices of these village cooperatives, acting as a contract between the Gaunkary (renamed Comunidade) and the colonial administration, acknowledging the rights and organisational structures of the agricultural communities.

At the heart of these village institutions has always been the land and waters they manage—resources they have stewarded from ancient times, which is enshrined in Article 647 of the Code of Comunidades: "It is not lawful to pass deliberation for dissolution of the properties of the Comunidades."

Checks necessary on fake cashewnuts

It is learnt that Goa's cashew nuts are likely to get a Geographical Indication (GI) tag by the end of May, which would be the 11th state unique agriculture products to get the status. This is good news for cashew farmers. The GI tag will officially recognise the distinctive flavor, quality and regional identity of Goan cashew nuts.

It will offer them enhanced protection in domestic and international markets. The certification is also expected to provide support to the local farmers who rely on cashew cultivation as a main source of income. Be that as it may, it must be said that sale of cashew nuts coming from outside the state and being sold as Goan cashew nuts must be stopped completely. This is absolutely necessary because several videos have gone viral on Social Media showing how fake cashew nuts are manufactured artificially in other states. There needs to

be a check on whether fake cashew nuts are entering Goa.

Fake cashew nuts can be identified by its colour, size, shape and taste. Real cashews exhibit a pure white colour, while fake ones tend to appear light yellow. Real cashew nuts have a little sweetness, while fake cashew nuts have a bland taste. Apart from genuine cashew nuts break easily but fake ones can feel sticky when chewed. When dropped in water original cashew nuts will sink while fake ones will float. The Food and Drugs Administration (FDA) needs to keep a check on the cashew nuts coming from other states as they could be artificially prepared ones.

Adelmo Fernandes, Vasco

Religious partisanship

It was shocking to note that permission for the annual Palm Sun-

letterstotheeditor

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day procession, a major event the Christian calendar was denied by the Delhi Police on vague grounds of 'law and order' and 'traffic issues.' Such action prima facie violates the Constitution which guarantees the right to practice and profess one's religion freely. Denial of permission is a concerted attack by the Sanghis on religious freedom and reflects discrimination aimed at silencing minority voices. This peaceful procession has been conducted by he Sacred Heart Cathedral for the past fifteen years bringing all communities together.

Modi during election campaigns meets assorted bishops and cardinals, professes equality of religions and discovers some 'purana nata' with the Christian community simply to garner votes. Recently he got the Catholic Bishop's Conference to

endorse his controversial Waqf Amendment Bill. These double standards are par for the course for BJP, minorities should see through his jumlas and not entertain Modi and others of his ilk.

Vinay Dwivedi, Benaullim

Palm Sunday procession disallowed in Delhi

With reference to the subject headline in our Herald newspaper dated April 14, I wish to ask PM Modi and the Catholic Bishops of Kerala if this is the religious freedom which we are having under the 'sab ka sath, sab ka vikas' sarkaar of the BJP in India?

Matias Lobo, Tivim

Flimsy ground to cancel procession

A prominent Catholic organisation has condemned the Delhi

Police's recent decision to deny permission for the annual Way of the Cross procession (a key religious event observed every Palm Sunday by the Christian community) for the Sacred Heart Cathedral in Delhi on flimsy reasons and which has been holding this peaceful religious procession every year for the last 15 years.

Of course, Union Minister of State for Minority Affairs George Kurrien, after coming under fire has now reportedly defended the above decision, stating that the denial was based on security concerns and which sounds really kishish. Why?

Well, I personally feel that the above decision was deliberately taken at the behest of leaders of the newly hoisted BJP government in Delhi (which includes the centre) to humiliate the Christian community to show its actual place and to take their most divisive agenda ahead in our country in the name of promoting Sanatan Dharma.

Jerry Fernandes, Saligao