

Frequent use of article 142 and Perarivalan case

- The Court has treaded the extraordinary constitutional route under Article 142. The power to do 'complete justice', for grant of remission and consequent premature release.
- The Bench decided to exercise the power of grant of pardon, remission et al., exclusively conferred on the President of India and State Governors under Articles 72 and 161.
- In the teeth of foundational bedrock and cornerstone of separation of powers viz. Parliament/Legislature, Executive and Judiciary, whether the course adopted by the Bench to do expedient justice is constitutional calls for introspection.
- The focus is only to evaluate the constitutionality of the decision in the context of Article 142.
- The power under Article 161 is exercisable in relation to matters to which the executive power of the state extends.
- While the Governor is bound by the advice of the Council of Ministers (Article 163), the binding nature of such advice will depend on the constitutionality of the same.
- Article 161 consciously provides a 'discretion' to the Governor in taking a final call, even if it was not wide enough to overrule the advice, but it certainly provides latitude to send back any resolution for reconsideration, if, in his opinion, the resolution conflicted with constitutional ends.
- In M.P. Special Police Establishment (2004 (8) SCC P.788) a Constitution Bench had held that the "Concept of Governor acting in his discretion or exercising independent judgment is not alien to the constitution.
- Implication of 'consultation'
- In the other Constitution Bench judgment in Sriharan's case (2016 (7) SCC P.1), arising out of the core of the Rajiv Gandhi assassination itself, one of the references placed for consideration was whether the term 'consultation' stipulated in Section 435 Cr.P.C. implies 'concurrence'.
- It was held that the word 'consultation' means 'concurrence' of the Central government.
- The Constitution Bench highlighted that there are situations where consideration of remission would have trans-border ramifications and wherever a central agency was involved, the opinion of the Central government must prevail.

- If it is a simple case of being a Section 302 crime, the reason for finding fault with the Governor's decision to forward the recommendation to the President may be constitutionally correct.
 - But the larger controversy as to whether the Governor in his exercise of power under Article 161 is competent at all, to grant pardon or remission in respect of the offences committed by the convicts under the Arms Act, 1959, the Explosive Substances Act, 1908, the Passports Act, 1967, the Foreigners Act, 1946, etc., besides Section 302, is in wobbly terrain.
 - According to the decision, it is a simple murder attracting Section 302 of the IPC and therefore the Governor's decision to forward the recommendation to the President is against the letter and spirit of Article 161 meaning it is against the spirit of federalism envisaged in the Constitution.
- In the case on hand, the Bench found fault with the Governor not having taken a decision on the recommendation of remission by the State Cabinet for a long time.
 - The fault of the Governor became more intense in the opinion of the Bench, when the Governor eventually referred the matter to the President of India for his decision, after sitting over the recommendation for more than two years.
 - The second aspect is the delay in taking a decision by the Governor in the matter.
 - The Constitution does not lay down any timeframe for the Governor to act on the advice of the Council of Ministers.

THE HINDU

India EVs

Article and issues

- The first is whether Article 142 could be invoked by the Court in the circumstances of the case when the Constitution conferred express power on the Governor alone, for grant of pardon, remission, etc., under Article 161.
- India's push for electric vehicles (EVs) was renewed when phase-II of the Faster Adoption and Manufacturing of (Hybrid and) Electric (FAME) Vehicles scheme in India, with an outlay of ₹10,000 crore, was approved in 2019.
- This was significant since phase-I, launched in 2015, was approved with an outlay of ₹895 crore.

- India was doubling down on its EV ambitions, focusing on cultivating demand for EVs at home while also developing its own indigenous EV manufacturing industry which could cater to this demand.
- Initially envisioned for three years, FAME-II got a two-year extension in June 2021 owing to a number of factors including the pandemic.
- It aims to support 10 lakh e-two-wheelers, 5 lakh e-three-wheelers, 55,000 e-four-wheeler passenger cars and 7,000 e-buses.
- Three-wheeler EVs like e-autos and e-rickshaws account for close to 65% of all EVs registered in India.
- In contrast, two-wheeler EVs come at a distant second with over 30% of registrations and passenger four-wheeler EVs at a meagre 2.5%
- The success India has experienced in the e-three-wheeler space has come from developing both the demand and supply sides.
- Subsidies, tax exemptions, and interest-free loans have successfully rallied demand for these vehicles.
- These vehicles provide for inexpensive means of transport for millions, are easy to maintain, and have relatively low operating costs, making them immensely popular among operators.

Issues to be addressed

- The current policies in place at the State level, which are focused on accelerating adoption of EVs among consumers, have spurred an e-three-wheeler dominance.
- However, this has come at some costs. A major one is adequate passenger safety.
- Subsequent EV policies must therefore pay special attention to this issue. Local manufacturing enterprises often lack the necessary resources or the motivation to invest in design developments focusing on safety.
- Lack of proper oversight from regulatory bodies over these manufacturers add to the woes.
- Future policies must therefore incorporate appropriate design and passenger safety standards.
- While the current State-level policies have been instrumental in increasing local e-three-wheeler manufacturing, they have led to an increasingly fragmented manufacturing industry with non-uniform standards akin to the formative years of motor vehicles in the early 20th century.

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Safety of AADHAAR

The story so far:

- Two days after issuing an advisory asking people to refrain from sharing photocopies of their Aadhaar Card, the Unique Identification Development Authority of India (UIDAI) opted to withdraw the notification.
- It stated that the action was to avert any possibility of ‘misinterpretation’ of the (withdrawn) press release, asking people to exercise “normal prudence” in using/sharing their Aadhaar numbers.

What does the law say?

- The Aadhaar (Targeted Delivery of Financial and Other Subsidies Benefits and Services) Act, 2016 makes it clear that Aadhaar authentication is necessary for availing subsidies, benefits and services that are financed from the Consolidated Fund of India.
- In the absence of Aadhaar, the individual is to be offered an alternate and viable means of identification to ensure she/he is not deprived of the same. Separately, Aadhaar has been described as a preferred KYC (Know Your Customer) document but not mandatory for

opening bank accounts, acquiring a new SIM or school admissions.

- The requesting entity would have to obtain the consent of the individual before collecting his/her identity and ensure that the information is only used for authentication purposes on the Central Identities Data Repository (CIDR).
- This centralised database contains all Aadhaar numbers and holder’s corresponding demographic and biometric information. UIDAI responds to authentication queries with a ‘Yes’ or ‘No’.
- In some cases, basic KYC details (as name, address, photograph etc.) accompany the verification answer ‘Yes’.
- The regulator does not receive or collect the holder’s bank, investment or insurance details.
- Additionally, the Aadhaar Act forbids sharing Core Biometric Information (such as finger print, iris scan, among other biometric attributes) for any purpose other than Aadhaar number generation and authentication.
- The Act makes it clear that confidentiality needs to be maintained and the authenticated information cannot be used for anything other than the specified purpose.

- More importantly, no Aadhaar number (or enclosed personal information) collected from the holder can be published, displayed or posted publicly.
- Identity information or authentication records would only be liable to be produced pursuant to an order of the High Court or Supreme Court, or by someone of the Secretary rank or above in the interest of national security.

What are some of the structural problems that the UIDAI faces?

- The Aadhaar Data Vault is where all numbers collected by authentication agencies are centrally stored.
- Its objective is to provide a dedicated facility for the agencies to access details only on a need-to-know basis.
- Comptroller and Auditor General of India's (CAG) latest report stipulated that UIDAI neither specified any encryption algorithm (as of October 2020) to secure the same nor a mechanism to illustrate that the entities were adhering to appropriate procedures.
- It relied solely on audit reports provided to them by the entities themselves.
- The CAG's reported stated that apart from the issue of multiple Aadhaar to the same resident, there have

been instances of the same biometric data being accorded to multiple residents.

- As per UIDAI's Tech Centre, nearly 4.75 lakh duplicate Aadhaar numbers were cancelled as of November 2019.
- The regulator relies on Automated Biometric Identification Systems for taking corrective actions.
- The CAG concluded it was "not effective enough" in detecting the leakages and plugging them.
- Biometric authentications can be a cause of worry, especially for disabled and senior citizens with both the iris and fingerprints dilapidating.

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UN Report on Taliban

- A new report from the Analytical Support and Sanctions Monitoring Team of the UNSC says that foreign terrorist organisations continue to enjoy safe haven under the Taliban regime.
- It adds that the terrorist groups are not likely to launch major attacks outside Afghanistan before 2023.
- Two India-focussed terrorist groups, Jaish-i-Mohammed (JiM) and Lashkar-e-Taiba (LeT), are reported

to have training camps in Afghanistan.

- Tehreek-e-Taliban Pakistan (TTP) constitutes the largest component of foreign terrorist fighters in Afghanistan, with their numbers estimated at 3,000-4,000.

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Israel and UAE

- Israel signed a free trade deal with the United Arab Emirates on Tuesday, its first with an Arab country, building on their U.S.-brokered normalisation of diplomatic relations in 2020.
- According to the Israeli side, scraps customs duties on 96% of all products traded.
- “Businesses in both countries will benefit from faster access to markets and lower tariffs as our nations work together to increase trade, create jobs, promote new skills and deepen cooperation,”
- The 2020 deal was part of the U.S.-brokered Abraham Accords that also saw Israel establish diplomatic ties with Bahrain and Morocco.
- Two-way trade between Israel and the UAE last year totalled some \$900 million dollars.

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