

A JUDGMENT THAT UPHOLDS THE CONSTITUTION

The Hindu

Paper - II
(General Studies)

Supreme Court judgment in the Media One case (Madhyamam Broadcasting Ltd Media One Headquarters v. Union of India and Others) requires a political reading and not merely a legal one. It is a landmark judgment on the freedom of expression and a judicial fiat against sealed cover malpractice. It endorses the citizen's right to question the state by distinguishing the government from the nation. It is a judicial admonition against the misuse of the rhetoric of national security to cover up the state's arbitrariness. Yet, there is a contextual significance to the verdict, which we must keep in mind.

What are recent criticisms against SC?

The judgment comes at a time when the Centre is being criticised for its attempts to destabilise the institutions of democracy. The Supreme Court too faces its share of criticism. It has postponed hearings on important cases such as electoral bonds and the dilution of Article 370. It has also upheld the draconian provisions of the Prevention of Money Laundering Act and taken a stand against constitutionally guaranteed freedoms, such as by staying a Bombay High Court order directing the release of physically challenged activist G.N. Saibaba.

What are the Israeli judicial reforms that are being opposed?

- Israel's Justice Minister Yariv Levin proposed amendments to the judicial system in the first week of January this year. Through amendments to the judicial system, the government is trying to reform Supreme Court nominees through a review committee and giving Parliament the right to reject Supreme Court decisions.
- Under the new law proposed by the Netanyahu government, a Supreme Court decision would be overturned by a simple majority of 61 MPs in the 120-seat Israeli parliament. The proposed reform would also change the system through which judges are appointed. This would give politicians more control over the judiciary.

An attempt to regain glory

Yet, the apex court has tried to regain its glory. In *Anoop Baranwal v. Union of India*, it took away the power of appointment of Election Commissioners from the sole domain of the executive and directed the constitution of a committee comprising the Chief Justice of India, the Prime Minister, and the Leader of the Opposition to select them.

The contribution of the Chief Justice of India, D.Y. Chandrachud, in modernising the court is remarkable. The Media One judgment has underlined the institutional capacity of the court in troubled political times.

In the past, many constitutional principles were developed by the court when the matter was either infructuous or had mere academic value.

When the *Bommai* case was decided in 1994, holding that federalism and secularism are the basic features of the Constitution, the real dispute in the case—the correctness of the dissolution of a few State governments—did not even survive for consideration, as elections were held in those States subsequently.

Again, when the *Puttaswamy* case challenging the Aadhaar project was decided in 2017, the Supreme Court only expounded the idea of privacy and related concepts at a doctrinal level, without a direct and immediate encounter with the executive, which, by that time, had completed the project.

On the other hand, in the *Media One* case, the court directly confronted the Centre, which unilaterally cancelled the licence issued to the television channel citing “national security,” and directed it to renew the licence. It considered all the major doctrinal issues such as the right to fair hearing, proportionality standard and public interest claims and issued directives to the Centre in concrete terms.

What are the challenges faced by the judiciary across the world?

In the global context, populist autocracies try to crush the judiciary with their majoritarian impulse. In Israel, the present mass movement is predominantly against Prime Minister Benjamin Netanyahu’s move to meddle with the independence of the judiciary.

What is Media one case?

- The Ministry of Information and Broadcasting had on January 31, 2022, refused to renew the broadcast licence of Malayalam channel MediaOne on the ground that the Ministry of Home Affairs had declined to grant it security clearance while considering the request for renewal of license.
- The MHA cited alleged links between the channel promoters Madhyamam Broadcasting Limited and the Jamaat-e-Islami Hind. Following this the channel was taken off air.

What happened in the High Court?

- The channel approached the Kerala High Court against the Centre’s action. During the hearing in the HC, the Centre told the HC that the decision to revoke the licence was based on grounds of national security.
- On February 9, 2022, a single bench of the HC had upheld the ban on the channel. On appeal, a division bench of the High Court, on March 2, upheld the order of the Single Judge.
- The HC division bench observed that when certain issues with respect to security of the State are concerned, the government is at liberty to decline to renew the permission granted without disclosing complete reasons for the non-renewal.

In Bolivia, judges have been arbitrarily dismissed in the last few years. In Poland, by lowering the retirement age of judges, the regime sent out older judges and inducted new persons who are loyalists of the government.

The executive in India delays making judicial appointments as suggested by the collegium. There is sometimes even public admonition of the judiciary by the executive in India.

The court and the Opposition

The Media One judgment was delivered in this scenario. It shows the judiciary's effort to resist majoritarian overtones. The court has taken a counter majoritarian role, which is qualitatively different from the role that the Opposition is supposed to play. Landau and Dixon have opined that "judges are increasingly being called upon to intervene to protect democracy or to engage in a form of democratic hedging."

American jurist Mark Tushnet correctly said that "the Constitution matters because it provides a structure for our politics" and that "it's politics, not 'the Constitution,' that is the ultimate—and sometimes the proximate—source for whatever protection we have for our fundamental rights." In other words, in the absence of a politics that supports the Constitution, the latter cannot survive.

The task before the court, however, is not to uphold the Opposition's politics, even when it might be legitimate. Recently, for instance, the apex court rightly dismissed a plea by Opposition parties, which alleged arbitrary use of central probe agencies against them. The grievance is genuine, but it needs a political solution, not an adjudicatory resolution.

This is how the court's constitutional politics vary from the Opposition's politics. The court can only put forth a judicial or constitutional check against an aggrandising State. It cannot pose a political check, which can only happen by way of mass movements or electoral decisions.

Yet, in the former, there is 'politics' involved and its impact could be political. It is this constitutional politics that enhances the intrinsic value of the Media One verdict. Yet, for the survival of the Constitution, we might need a struggle outside the court, which should complement the court's counter majoritarian postures.

Expected Question

Que. Consider the following pairs:

1. Puttaswamy Case - Right to Privacy
2. Bommai Case - Federalism
3. Anoop Baranwal Case - Reforms in the Election Commission

How many of the above pairs are correctly matched?

- (a) Only one
- (b) Only two
- (c) All three
- (d) None

Answer : C

Mains Expected Question & Format

Que.: 'The recent decision given by the Supreme Court in the Media One case is a historic milestone for Indian politics and Indian legal system.' In the light of this statement, analyze the recent decision of the Supreme Court.

Answer Format :

- ❖ First of all, briefly describe the matter.
- ❖ Explain the significance of this decision for Indian politics and Indian legal system.
- ❖ Discuss what could be the far-reaching effects of this decision.

Note: - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC mains examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.