



POCSO shocker

HC ruling ignores specific provision defining aggravated form of sexual offence

The recent Allahabad High Court verdict that a penetrative sexual assault on a 10-year-old boy by an offender did not amount to an aggravated form of the crime appears to be *per incuriam*, that is, a ruling handed down without due regard to the law and facts. The offence that was proven in the trial, and endorsed without demur by the High Court, involved the child being made to perform an oral sexual act. The Court agrees that it was a “penetrative sexual assault” as defined by the Protection of Children from Sexual Offences (POCSO) Act, as the accused had put his member into the victim’s mouth. However, it did not amount to “aggravated penetrative sexual assault”, a crime punishable with a minimum prison term of 10 years that can go up to life, Justice Anil Kumar Ojha has said. Instead, it was punishable under Section 4 of POCSO, which prescribes a minimum seven years. Accordingly, he reduced the trial court sentence of 10 years in jail to seven years. The High Court is palpably in error, as it failed to note that a sexual offence takes the character of an aggravated form of the same offence in certain circumstances under POCSO. The main circumstances involving aggravation given in Section 5 are where the offender is a police officer, a member of the armed forces, a public servant or someone on the staff of a jail, remand home, hospital, educational or religious institution, or any place of custody or care and protection.

However, these are not the only circumstances. Where the crime involves a group of offenders, or is done repeatedly, or when it pertains to the use of deadly weapons or causes grievous harm or injury, or leads to physical or mental incapacitation, pregnancy, or disease, it is also an aggravated form of the offence. Significantly, Section 5(m) adds “whoever commits penetrative sexual assault on a child below 12 years” to this list. The High Court seems to have missed either this legal provision while reducing the sentence, or the fact that the child was about 10 years old when the offence took place. The fact that the convicted person will stay in jail for seven years will not obviate the deleterious effect of the ruling – that a particular act, amounting to a penetrative sexual act, does not attract the punishment prescribed for its aggravated form – will have on lower courts trying similar cases. It is a matter of coincidence that this ruling came from the Allahabad High Court on the same day as the Supreme Court’s judgment underscoring the importance of not diluting the gravity of an offence against a child by ignoring the plain meaning of POCSO’s provisions. The verdict in *Sonu Kushwaha vs State of U.P.* is a fit case for review, as it seems to be based on an error of law.

Virus rages in Europe

Vaccines alone will not be able to break the transmission chain and end the pandemic

With the staggering increase in daily fresh coronavirus cases and deaths in much of Europe, the continent has for the second time since last March, become the pandemic epicentre. The resurgence in daily new cases which began in early October and restricted to three countries has since spread and is driven by the Delta variant. The continent reported nearly two million new cases last week, the highest since the pandemic began; more than half of the global COVID-19 deaths this month were in Europe. In Austria, the Netherlands, Germany, Denmark, and Norway, the daily cases are the highest since the pandemic began; Romania and Ukraine reported record high numbers a few weeks ago. With hospitals fast filling up, WHO predicts that there would be extreme stress on hospital beds and intensive care units in many European countries between now and March next year. While the vaccination rates in most countries in western Europe are higher – Ireland leads the table with over 90% adults being fully vaccinated in early September – the vaccination levels are relatively lower in eastern Europe. With France setting an example, many countries are now making it difficult for the unvaccinated to freely travel or enter certain public or even workplaces, in an attempt to increase vaccine uptake. And in a first, Austria made vaccination mandatory starting February next year and went into a national lockdown for three weeks from November 22. Austria has managed to fully vaccinate about 65% of its eligible population, which is one of the lowest rates in western Europe.

While most of the new daily cases reported are among the unvaccinated, breakthrough infections and hospitalisations are being reported in the fully vaccinated too. However, the deaths have predominantly been among the unvaccinated. Even while WHO has called for a moratorium on booster doses till this year-end so vaccines become available to developing countries, its Europe office has endorsed administering booster doses as a “priority” to the most vulnerable populations – based on growing evidence of a decline in protection against infection and mild disease among the fully vaccinated. As evidence has shown, vaccines alone will be insufficient to break the transmission chain. Unfortunately, most western countries focused primarily on increasing vaccination coverage while foregoing simple yet highly effective non-pharmaceutical interventions such as universal mask wearing, physical distancing and improved ventilation in confined spaces. A study, which is yet to be peer-reviewed, predicts 0.9 million more hospitalisations and 0.3 million additional deaths in 19 European countries where people have been neither infected nor vaccinated. WHO predicts 0.7 million more deaths by March 2022 in Europe and central Asia. Compliance with public health measures can indeed avoid needless infections and deaths.

Battered and bruised, repealed and withdrawn

The shaping of the different trajectories of the farm laws and Andhra’s ‘three capitals’ plan is revealing



K. CHANDRU

The announcement by Prime Minister Narendra Modi on November 19, on the withdrawal of the three farm laws and his urging “all agitating farmers to go back to their families and villages and let’s make a new beginning”, did not raise eyebrows in the country. There were compulsions, both internal and external, for the Bharatiya Janata Party to do so notwithstanding the fact that the laws were under legal scrutiny by the Supreme Court of India. The forthcoming elections to the Uttar Pradesh and Punjab Assemblies may have also been a factor in shaping the Prime Minister’s decision.

A long battle

After Parliament hurriedly passed the three enactments, to bring in ‘reforms’ in the agriculture sector, the volley of protests began. Swarms of farmers along with their tractors converged along the borders of Delhi marking the beginning of an over year long battle. Surprisingly, many State legislatures have passed resolutions opposing the three farm laws. When someone questioned the authority of the legislatures to pass such resolutions, it was correctly negated by the Supreme Court.

When cases were filed in the Supreme Court, it not only granted a limited stay of the implementation of the laws but also appointed an expert committee to submit a report on these pieces of legislation. The Court also raised the question whether it was proper for the protesters to continue with their agitation even when the Court was seized of the matter. Another question was also raised over how long the agitating farmers would occupy the roads and that there must be a limit for such sit-ins.

The Modi Government did not wait for any verdict from the Court but took the pragmatic position to withdraw the farm laws in view of the “large-scale misconceptions” among the people. However, the

farmers have indicated that they will still continue to protest until the repeal law is passed in the winter session of Parliament. In a democracy, ultimately, sovereignty vests with the people and elected Parliamentarians have only a limited brief of legislating on the subjects allotted to Parliament. On the other hand, there is nothing in the law to prevent those aggrieved from lobbying against such laws which according to them is harmful, even though, significantly, the higher courts have the power to scrutinise any law made and to determine whether they are inconsistent with the fundamental rights enshrined in Part III of the Constitution. Many a time the delay in determination also makes the aggrieved impatient by taking the matter to the streets.

Plan for a capital

But the announcement of the withdrawal of the farm laws was not surprising when compared to the announcement of withdrawal of the Andhra Pradesh Decentralisation and Inclusive Development of All Regions Act, 2020 and the A.P. Capital Region Development Authority Repeal Act, 2020 by the Y.S.R. Congress Party (YSRCP) Government led by its Chief Minister Y.S. Jagan Mohan Reddy. After the election of his party, the YSRCP, to form the government, he decided to dismantle the only capital of Andhra Pradesh at Amaravathi; he also decided on its trifurcation: Amaravathi (legislative), Kurnool (judicial) and Visakhapatnam (executive). This new law was passed when the YSRCP won 151 seats in the 175-member Andhra Pradesh Assembly in 2019. The Telugu Desam Party (TDP) which became the first ruling party of the newly formed Andhra Pradesh State was reduced to 23 seats.

N. Chandrababu Naidu who led the TDP after the bifurcation of the undivided Andhra Pradesh State into Telangana and Andhra Pradesh decided to locate the new capital at Amaravathi which is situated between Vijayawada and Guntur and inaugurated the interim secretariat there. To locate and develop the infrastructure of the capital, the TDP Government acquired an estimated 33,000 acres from farmers while also proposing to acquire another 50,000



SUSHIL KUMAR VERMA

acres, leading to large-scale protests from the farmers of the region. Notwithstanding this, the TDP Government proceeded with the construction of the capital, allotting plots to judges of the High Court for their residences. The High Court also approved the plan submitted to create judicial infrastructure for locating the new High Court and other subordinate courts at Amaravathi.

The twists and turns

Taking advantage of the farmers’ unrest, the successor Y.S. Jagan Reddy Government began a campaign to have three different capitals, even enacting a law. An inquiry into the land purchase and allotments was ordered. Controversy arose when a case was registered against a former Andhra Pradesh Advocate General and the family members of a Supreme Court judge alleging that there had been insider trading. On a petition filed by the former Advocate General, the Andhra Pradesh High Court issued a gag order on the press from reporting on the first information report filed by the Anti Corruption Bureau. The gag order was stayed by the Supreme Court of India on a petition filed by the Andhra Pradesh Government. Subsequently, several developments took place in the Andhra Pradesh High Court. Justice D.V.S.S. Somayajulu stayed the SIT probe ordered against the land scam pursuant to a decision taken by a cabinet sub-committee.

There were several shocking developments subsequent to the probe being ordered against the Amaravathi land deal. A Division Bench of Justice M. Satyanarayana Murthy and Justice Lalitha Kanneganti, J.J. ordered an inquiry into a telephonic conversation allegedly about a plot against the Chief Justice of Andhra Pradesh and another sitting judge of the Supreme Court. The inquiry was to be headed by a retired Supreme Court Judge, Justice R.V. Raveendran, to

verify the authenticity of the conversation. It is interesting that Justice Raveendran has been appointed by the Chief Justice of India, Justice N.V. Ramana, to supervise the three-member expert committee that will go into the Pegasus snooping case.

It was more shocking when a division Bench of Justices Rakesh Kumar and J. Umadevi while hearing a *habeas corpus* petition (on a request on behalf of the Advocate General for a short adjournment, passed an order dated October 1, 2020) which said: “On the next date, learned senior counsel appearing on behalf of the State may come prepared to assist the Court as to whether in the circumstances, which are prevailing in the state of Andhra Pradesh, the Court can record a finding that there is Constitutional breakdown in the State or not”. It is unheard of for a court to make a mention about bringing President’s Rule in a case between the state and an individual.

It was under these circumstances that the Chief Minister, Y.S. Jagan Mohan Reddy, wrote a letter dated October 11, 2020 to the then Chief Justice of India for an inquiry into the role of the Supreme Court judge, who, according to him, was involved in a scam. However, no such in-house enquiry was ordered. However, the letter by the Chief Minister was released to the press by the personal adviser to the Chief Minister.

Things did not end with a complaint made to the highest judicial authority. The next day, the same division Bench while entertaining another case observed: “Even some occupying high positions and Constitutional posts are not restraining themselves in committing the same mistake... due to the result of [a] larger conspiracy, the CBI [Central Bureau of Investigation] is required to take appropriate action against such culprits irrespective of the post and position. It goes without saying that the CBI immediately after taking up investigation may take steps so that all the defamatory posts available on social media, i.e., private respondents, may [be] struck down and may also take steps to block such users in accordance with law.”

The Chief Minister’s woes conti-

nued. The new Chief Justice of Andhra Pradesh, Prashant Kumar Mishra, and Justices Satyanarayana Murthy and Somayajulu, constituting the full Bench, held a fresh hearing of the batch of writ petitions that challenged the Andhra Pradesh Decentralisation and Inclusive Development of All Regions Act, 2020 and Capital Region Development Authority Repeal Act, 2020. The Government of Andhra Pradesh filed a recusal petition asking Justices Satyanarayana Murthy and Somayajulu to withdraw from the full Bench hearing as they were admittedly recipients of a housing plot at Amaravathi allotted to them. When this issue was raised before the court, the Chief Justice presiding over the Bench refused the recusal, and when asked for an order on this issue, said that orders would be passed along with the main case. In normal course, when even allegations of apparent bias on the part of the presiding officers are raised, appropriate orders will be pronounced then and there as such matters go to the root of the issue.

A ‘strategy’

Even while the arguments are in progress, the Y.S. Jagan Mohan Reddy Government came up with the withdrawal of the two pieces of legislation with a reservation to introduce an appropriate Bill at a later date. It is not clear whether the Government was giving in to the pressure mounted by the Opposition TDP or that it did not want to face litigation at this juncture becoming adverse. In any event, the withdrawal proposal followed from the developments the Government faced *vis-à-vis* the judiciary. The Government had not given up the proposed trifurcation of the capital and locating them in three regions. This may be a litigation strategy normally adopted by litigants expecting changes in the judicial spectrum.

The withdrawal of the legislations by two governments has a different background but what is worrisome is the circumstances surrounding the State government’s decision that has no parallel in the judicial history of India.

Justice K. Chandru is a retired judge of the Madras High Court

Pointers that India is witnessing a K-shaped recovery

The economic ravages of the pandemic have had an uneven impact and taxation policies continue to be regressive



ANAND SRINIVASAN & SASHWATH SWAMINATHAN

There has been great chatter about a V-shaped recovery for quite a while, ever since the first lockdown following the novel coronavirus pandemic. A V-shaped recovery is characterised by quick and effective recovery in measures of economic performance after an acute decline in the economy. There is undeniably some type of recovery, but one can hardly label it V-shaped. The economic ravages of the pandemic have had an uneven impact on different socio-economic groups. The recovery we see today is more K-shaped than V-shaped, with various groups and industries recovering much more rapidly than their counterparts.

Signs from industry

Government taxation policies continue to be regressive, with increased indirect taxes and lower direct taxes placing greater tax incidence on the destitute. The effects of this K-shaped recovery can be observed through the growth and consumption in specific industries.

Two-wheelers represent the

economic situation of the lower and middle-class groups and India’s small businesses. A report by analytical company CRISIL indicates that in the year 2021, two-wheeler sales are set to decline by 3%-6% year-over-year. This is on top of a lower base in the year 2020 already affected by the pandemic. The actual decline of two-wheeler sales from pre-pandemic times on account of the base effect must be much more significant. The sales of two-wheelers are the second-lowest it has been in seven years. It is imperative to note that entry-level models are the ones most affected under the category of two-wheelers. The festival season was said to rectify this phenomenon, but it had been unable to. On the other hand, premium cars and premium motorcycles have been resistant to the pandemic slowdown.

Impact of taxation

Moreover, the usurious taxation policy of the Government, which insists on maintaining indirect taxes on fuel and consumer products while lowering corporate taxes, paints a picture explaining these figures. The Government had recently raised taxes on textile products from 5% to 12%. While inflation soars, the incomes of the middle and lower-middle-class have at best remained constant. There is tremendous pressure on the financial stability of these households, which seemingly face a



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sustained loss in disposable income. Besides, the figures representing those who are employed only partially explain this phenomenon.

On jobs, NREGA

Over five million or 50 lakh people lost their jobs in October, according to a Centre for Monitoring Indian Economy (CMIE) report. Many of those who lost their jobs during this period are likely economically insecure and abstain from non-essential purchases. This, paired with the astronomically high food and fuel prices, delivers a deadly blow pushing families to poverty.

Additionally, it is prudent to look at Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) figures as it acts as a proxy for the informal sector, which employs a large portion of Indians. In the year 2021-2022, the Government of India had cut its budget allocation towards MGNREGA by 34%. There is a greater demand now for MGNREGA

jobs than in the pre-COVID-19 era. The lower Budget allocation accounts for the inability to compensate workers in time and fairly. A portion of the Budget this year is spent on paying the liabilities for the previous financial year. Those looking for MGNREGA work cannot afford to be unpaid for such long durations. This again ties back to placing upward pressure on unemployment figures.

Stimulus and growth

Therefore, there seems to be no surprise that the consumption of two-wheelers and other such products has taken a significant hit. The U.S. and European economies have stimulated the economy bottom-up through unemployment cheques and social welfare schemes. The economist, John Maynard Keynes, popularised the concept of the money multiplier and the relationship between government stimulus and economic growth. It fundamentally makes great sense to prioritise those who are more likely to spend (the middle and lower-middle-class) rather than those who have a greater propensity to save. The velocity of money which sustained a significant shock from pandemic lockdowns needs to be kickstarted. Furthermore, the inflation of asset prices over the recovery period helps determine the nature of this recovery.

The recovery in the stock market and other such financial assets

over the past year has been phenomenal. However, it is essential to understand that this does not necessarily reflect the economy’s condition as observed previously. Less than 5% of India invest in equities, which means that less than 5% of India directly benefited from said recovery. The lower middle class, which does not invest in such assets for many reasons, has no guard against inflation. Their only hedge against inflation is their income which makes for a poor one.

Think welfare schemes

Therefore, as discussed before, their financial situation is worsened due to the rising prices of essential goods. Moreover, the disproportional benefit of the asset price inflation favouring the upper-middle-class further displays the inherent K-shape of the recovery. It is crucial that the Government addresses this phenomenon and works towards aiding the middle and lower-middle class. Social welfare schemes must be given greater importance to assist households to get through this period. A seemingly viable solution is for the Government to increase progressive (direct) taxes and reduce regressive (indirect) taxes to ease the financial pressure on lower-income households.

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LETTERS TO THE EDITOR

Letters emailed to letters@thehindu.co.in must carry the full postal address and the full name or the name with initials.

A mother’s fight

The case of Anupama S. Chandran of Kerala and her son has been riveting (Inside pages, “DNA tests confirm Kerala woman’s claims on baby”, November 24). It is also a commentary on the adoption system in India. What shattered me the most is the plight of the foster parents who legally followed every procedure only to have the baby taken back. Though this case has a political angle, which may

make it a special one, it could discourage people from adopting children. We need to have better standard operating procedures and checks that ultimately encourage adoption without trauma.

VINEESHA BADRAGANI, Guntur, Andhra Pradesh

■ The case has shaken the foundations of the political, social and cultural spectrum that Kerala is. The valiant fight by the young mother

will have an impact on Kerala’s society.

N. RAJASEKHARAN, Ariyannur, Thrissur, Kerala

Parliamentary steps

The article, “Go back to committees” is the farm laws lesson”, (Editorial page, November 22), implying that the Centre has wantonly swerved from its stand, either referring the Farm Bills to the Standing Committee or a Joint Selection Committee, as

ought to have happened, should be viewed in the proper perspective it deserves. Two pertinent questions which need plausible answers from the Centre are: the reason for not referring the contentious farm Bills in question to the Standing Committee, which has been the regular practice, in existence so far. Is this not shrouded in mystery?

The second is why the farmers were not taken into

confidence prior to the ordinance.

MANI NATARAJAN, Chennai

Kodaikanal besieged

The hordes of tourists flooding Kodaikanal is nothing short of wanton destruction of this fragile ecosystem. Local people are bewildered and ask if this is revenge tourism! It is truly debilitating anyway you look at it. Driving is impossible with traffic snarls, road rage

and gridlock for the most part. This is not in the interest of tourists, residents, and eventually the hill station itself. Mounds of garbage and an unbearable stench herald the dawn. During the pandemic, the e-pass system worked most effectively. It is the only practical solution to a nightmare now.

M.E. AVARI, Kodaikanal

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