

EDITORIAL HIGHLIGHTS

03-10-2026

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A Court divided by its own architecture

On September 23, a two-judge Bench of the Supreme Court of India, comprising Justices Dipankar Datta and Satish Chandra Sharma, delivered a split verdict on a set of petitions which assailed the validity of the Chief Election Commissioner and other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023. Remarkably, the judges were divided not on the merits of the challenge, but on whether a Bench of two was competent to decide the matter at all.

An appointment framework

The statute, which was enacted in December 2023, provides that the Chief Election Commissioner and the Election Commissioners shall be appointed on the recommendation of a selection committee comprising the Prime Minister, the Leader of the Opposition in the Lok Sabha, and a Union Cabinet Minister nominated by the Prime Minister. This law replaced an interim arrangement that a Constitution Bench of five judges had put in place in *Anoop Baranwal vs Union of India* (2023). Under that arrangement, the Chief Justice of India (CJI) sat as the third member in place of a Minister.

Midway through the hearings in the matter, which began in May, the Union government changed tack and argued that the case raised a substantial question of law as to the interpretation of the Constitution. It therefore claimed that the challenge, in terms of Article 145(3), ought to be heard by a Bench of at least five judges. Curiously, this plea was made even though it found no place in the Union's counter-affidavit.

While Justice Datta rejected the request, Justice Sharma accepted it. Ordinarily, a difference of opinion on a Bench of two is resolved by a Bench of three. But reasoning that a ruling on which of their opinions was correct would only delay matters further, both judges jointly placed the papers before the CJI asking him to consider constituting a Constitution Bench. The upshot is this: the petitioners, who came to court in early 2024, must now wait again.

As Justice Datta rightly held, Article 145(3) merely prescribes that a case involving a substantial question of constitutional interpretation ought to be decided by a Bench comprising a minimum of five judges. It does not ask whether a case is important or whether a statute under challenge is new. As far back as in 1959, in *State of Jammu and Kashmir vs Thakur Ganga Singh*, the Court explained, albeit in a different context, what a question of constitutional interpretation entails. "The question of interpretation can arise only if two or more possible constructions are sought to be



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placed on a provision – one party suggesting one construction and the other a different one," the Court had held. "But where the parties agree on the true interpretation of a provision or do not raise any question in respect thereof, it is not possible to hold that the case involves any question of law as to the interpretation of the Constitution." A Bench of three judges later applied the same reasoning to Article 145(3) itself, in *People's Union for Civil Liberties vs Union of India* (2003).

A deeper institutional fault

What, then, did *Anoop Baranwal* settle? Justices Datta and Sharma agreed that the committee the judgment had created was a stopgap, meant to last only until Parliament enacted a law. To that extent, the Union may well be right in claiming that the CJI's place on the committee is by no means constitutionally entrenched. But the Constitution Bench also read Article 324 to require that appointments to the Election Commission be insulated from exclusive executive control. This was a clear declaration of law, binding on every court under Article 141. As Justice Datta held, whether a committee in which the executive holds two votes out of three meets that standard is merely a question of applying this settled rule to a new statute.

Justice Sharma's opinion adopted a different test. He held that since "there is no authoritative decision of this Court till date pronouncing upon the constitutional validity of the [2023] Act, the matter must be heard by a Constitution Bench of not less than five judges." But almost any challenge to a fresh statute would, in this sense, be the first of its kind. On such logic, Benches of two judges could not have decided *Shreya Singhal vs Union of India* (2015), which struck down Section 66A of the Information Technology Act or *NALSA vs Union of India* (2014), which affirmed the right of transgender persons to their self-identified gender. Each called for a searching analysis of the Constitution and its guarantees.

Ultimately, though, a disagreement of this kind points to a deeper fault in the Court's architecture.

When the Court first sat, in January 1950, it had six judges (a sanctioned strength of eight judges). Article 145(3), with its minimum of five, assumed that the Court would, in the main, sit together to interpret the Constitution. Today the Court has a sanctioned strength of 38 judges. It functions largely in panels of two and spends most of its time on special leave petitions. A Constitution Bench is assembled only when the CJI can spare at least five judges from this daily churn. The result, as the scholar Nick Robinson has argued, is not one court but many, with each Bench speaking in its own voice.

To be fair, the joint order signed by Justices Datta and Sharma recognises as much. *Anoop Baranwal* arose out of a petition instituted in 2015, was referred to a Constitution Bench in 2018, and was decided in 2023. The reference in *State of Uttar Pradesh vs Jai Bir Singh*, to decide what counts as an "industry", lay dormant for 15 years from 2002, and took nine more to reach the nine-judge Bench that finally decided it. The judges themselves describe such delay as a source of "institutional embarrassment."

The need for clearer rules

Delay of this kind carries with it a corrosive consequence: it presents the Court with a *fait accompli*. Take the present challenge. By the time it is decided, Commissioners appointed under the law would have overseen multiple State elections and likely multiple general elections too. In their joint order, the judges ask the CJI to explore a permanent Constitution Bench to decide pure questions of constitutional law. The idea is far from new. The Law Commission, in its 229th report in 2009, proposed a Constitution Bench sitting in Delhi, with Benches in different regions of the country hearing ordinary appeals.

A Bench of that form would need no constitutional amendment. The CJI, as the Master of the Roster, can create one tomorrow. But therein lies another difficulty. On a court of 38 judges, the power to decide who sits on which Bench is more than an administrative power. It can, and often does, shape outcomes. We might therefore ask ourselves whether such authority ought to be concentrated in a single office. For a permanent Bench to command confidence, it must be composed through a procedure that is transparent, settled in advance, and based on bright-line rules.

There is, however, a further difficulty. India's legal system is built on a supposed commitment to the principle of *stare decisis*, a promise to stand by things previously decided. Yet, there is little to suggest that the Court's Benches, whatever their size, will consistently honour what earlier Benches have held. The present case shows as much. A Bench of two, albeit divided, has declined to apply a principle settled by a Bench of five, and has sent the case to a Constitution Bench simply because the statute under challenge is new.

The Court, in its original conception, was seen as a guardian of the Constitution that would also hear appeals. Over time, though, it has become a forum that sits predominantly as a court of appeal rather than as a constitutional court. This inversion demands urgent correction. Otherwise, the gravest questions facing the republic will continue to be answered only once the answers have ceased to matter.

The Court needs structural reform to strengthen constitutional adjudication and consistency

GS 2: INTERNATIONAL RELATIONS

THE HINDU PAGE: 13

China opens first overseas air base in Laos, widening military footprint

Agence France-Presse
BANGKOK

When China opened its first overseas air force base this week, a joint facility in isolated Laos, it was sending a signal – its foreign military foothold is set to grow, analysts said.

Beijing has long sought to increase its influence across Asia-Pacific, competing with Washington and its allies over crucial shipping routes and under-sea resource exploration, including in the disputed South China Sea.

Under leader Xi Jinping, the world's second-largest economy has sought to modernise its military, ramping up defence spending and pressure on Taiwan, which it claims.



A satellite image shows construction of an airport in Ban Keun, Laos, where China opened a military support and training centre. REUTERS

Until now, installations abroad were primarily naval bases. The Joint Flight Training and Support Centre in Laos is the “first air force base that China has abroad”, said Joshua Kurlantzick, a Southeast Asia expert at the Council on Foreign Relations.

He told AFP that more

will likely be established, in the region and in other nations friendly to China, as it experiments with how to run an air base beyond its borders.

China is “not building one base in Laos and stopping”, he said.

The two communist nations said the centre at Ban

Keun airfield, north of the Laotian capital Vientiane, was aimed at training Laotian air force pilots.

China's Defence Ministry added that the site would be “maintained for normal operations by both sides” and did not target any third party.

Security researcher Colin Koh said that China – Laos's largest creditor – was “trying to showcase that it is able to extend itself in defence diplomacy”, at least with “amenable countries”.

Training Laotian pilots will require China to put military assets there – whether modest transport aircraft or modern fighter jets. “From training then you have a [Chinese] military presence,” he said.

GS 3: ENVIRONMENT

INDIAN EXPRESS PAGE: 1 AND 2

• TWO MALE CHICKS, AGED FOUR TO SIX MONTHS OLD, LIKELY TO BE RELEASED IN EXISTING ENCLOSURES IN DESERT NATIONAL PARK, JAISALMER

For the first time, captive-bred Great Indian Bustard will set foot in the wild

Nikhil Ghanekar
New Delhi, October 2

CONSERVATION OF the critically endangered Great Indian Bustard (GIB) birds, which number about 140 in the wild, will enter a critical phase this weekend with at least two captive-bred GIB chicks slated for a pilot wild release in enclosures within the Desert National Park (DNP) in Jaisalmer. The Indian Express has learnt.

which is under implementation since 2013 for the long-term recovery of the flagship species of the Thar landscape. According to those aware of developments, Union Environment Minister, Bhupendra Patel, and Rajasthan Chief Minister, Bhupendra Patel, are likely to preside over the pilot release event, which is expected to be held on October 4. Already, a few chicks have been released at an aviary in Sam for soft release, away from humans, to prepare them

for the rewilding process. "Two male chicks, aged four to six months old, are likely to be released in existing enclosures within the Desert National Park. These birds will be radio-tagged to monitor their movement and behaviour," said K C A Arun Prasad, Chief Wildlife Warden, Rajasthan Forest Department. The GIB, a keystone species of arid and semi-arid open natural ecosystems, has been on the brink of extinction with its wild population hovering in



Newly hatched GIB chicks at the National Bustard Conservation Breeding Centre in Jaisalmer. PROJECT GIB ANNUAL REPORT 2024-25

E. EXPLAINED

Insect feed

The timing of the pilot release in Desert National Park (DNP) in Jaisalmer has been scheduled with the end of monsoon as the insect load in the grasslands will aid feeding of the Great Indian Bustard chicks. The GIB has a slow reproduction rate, laying eggs once every one-two years.

the range of 120-150 for many years. According to latest population estimates, the largest population, 130 (+/-20) is in Rajasthan with about 5-6 individuals across Gujarat, Maharashtra and Karnataka. They have faced threats ranging from habitat loss, poaching, and depredation of individuals and GIB eggs by predators. More recently, mortality due to collisions with power lines erected to evacuate power from renewable energy projects have posed a threat. The Supreme Court has or-

dered that renewable energy project power lines situated in areas outside the DNP have to be buried underground by December 2027. The GIB chicks to be released in the wild were bred and raised in captivity under the 'conservation breeding' phase of Project GIB. To insure against their low wild population, at least 98 Bustards have been bred in captivity at the Wildlife Institute of India's (WII) conservation breeding centres at Sam and Ramdevra, in Jaisalmer.

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Bustard

Beginning 2019, wild collected eggs were artificially incubated, hatched and raised by a team of WII scientists. Of the 98 birds, 40 have been raised through artificial incubation, while 57 were born to birds who mated in captivity at these centres.

Earlier this year, the "jumpstart" method was also used in which infertile eggs laid by wild female GIBs in Kutch, Gujarat, were replaced with viable eggs from Rajasthan's captive-breeding centre by WII scientists in collaboration with the Rajasthan and Gujarat forest department. The chick that was born

in the second such attempt has survived the critical first three months in the wild, as per a press release issued by the Environment Ministry earlier this month.

The timing of the pilot release has been scheduled with the end of monsoon as the insect load in the grasslands of DNP will aid feeding of the GIB chicks. The GIB has a slow reproduction rate, laying eggs once every one-two years.

The enclosures within DNP are spread over 15-20 sq km. According to the latest GIB population estimation survey, at least 40 individual birds are distributed in the northern part of DNP — around the release sites. Those working on Project GIB said that the chicks that will be re-

leased will have to survive the risks of predation, with the presence of birds of prey, desert foxes in these habitats. The survival of a captive-bred bustard released in the wild is low, between 10-30 % a year, according to those associated with the project.

"It is the beginning of a long challenge," said Sutirtha Dutta, Wildlife Institute of India (WII) scientist and project investigator.

The latest population survey, carried out in 2024-25 and made public in July this year, had noted that the GIB were largely concentrated on flat grasslands, devoid of human settlements and renewable energy infrastructure, in and around the DNP and Pokhran Range in Jaisalmer district.

GS 2: POLITY

INDIAN EXPRESS PAGE: 08

In democracy's journey to future, Gandhi is the wise guide and co-traveller

IS GANDHI relevant for imagining the future trajectories of democracy in India? I do not want to explore this question in typical Gandhian fashion to express my gratitude to the father of the nation on his birth anniversary. Instead, I want to take up the challenge posed by Yogendra Yadav for all of us in one of his recent articles in this newspaper (*IE*, "Democracy needs renewal. Our idea of Swaraj offers some answers," September 22). Yadav has forcefully argued that we need to employ Gandhi, and other thinkers and practitioners of modern India, as "resources" to reimagine a more egalitarian futuristic institutional architecture.

Yadav's invitation also points towards an interesting paradox. Gandhi is usually commemorated as a symbol of protest politics. People's movements, campaigns led by civil liberty groups and popular protests of various kinds recognise the significance of Gandhian techniques, especially the non-violent Satyagraha. That has been the reason Gandhi's image as an activist continues to survive even eight decades after his death. Despite being celebrated as a successful protester, Gandhi is not seen as a relevant figure for any serious discussion on institutional-building. Even the admirers of Gandhi prefer to remain silent on this issue.

It is true that Gandhi had always been critical of the idea of the modern state. He preferred to call himself a philosophical anarchist; he celebrated his inconsistencies and context-specific responses to emerging questions of public life. *Hind Swaraj* (1909) is the only book that he refused to amend, change, update or edit. These examples certainly underline Gandhi's non-conformist attitude.

Yet, one cannot ignore a constructive impulse in his writings and politics.

Gandhi encourages us to oppose injustice of all kinds by adhering to the values of truth and non-violence. At the same time, he is deeply interested in developing alternative, humane, decentralised, inclusive, and above all, truthfully democratic public institutions. In an article written in 1925, Gandhi argued: "I remain loyal to an institution so long as that institution conduces to my growth, to the growth of the nation. Immediately I find the institution instead of conducing to its growth impedes it, I hold it to be my bounden duty to be disloyal to it" (*Young India*, August 13, 1925).

Gandhi's creative intellectual positioning is very relevant for us to revisit the three fundamental questions Yadav has raised: Social hierarchies and economic disparity that makes one-person-one-vote insignificant; politically controlled mass media, which prevents the formation of an effective public opinion; and political centralisation that leads to a person-centric authoritarianism.

Caste-based prejudices, communal stereotypes and the supremacy of rich and powerful individuals have reshaped our public life in the past three decades. Violence against Dalits, women and minorities has increased in an unprecedented manner, while the poverty and economic helplessness of the majority of Indians has not yet become an electoral issue. From Gandhi's standpoint, we can think of a critically constructive response: The marginalisation of Dalits and minorities is primarily talked about as a group-specific



HILAL AHMED

It is true that Gandhi was critical of the idea of the modern state. He preferred to call himself a philosophical anarchist. Yet, one cannot ignore a constructive impulse in his writings and politics

issue. It creates an impression that their concerns are not at all "national". The binary between national interests and the marginalisation of deprived groups has emerged as an unwritten guiding norm of policy discourse. Against this backdrop, one can propose to have a robust cultural policy framework not merely to democratise the institutional culture but also to create an environment in which the poor, Muslim, Dalit, and woman can feel secure that his/her anxieties are going to be addressed as "national issues".

Gandhi was aware of the significance of an informed and reasonable public opinion. For him, "... a Satyagrahi... must first mobilise public opinion against the evil which he is out to eradicate... when public opinion is sufficiently roused against a social abuse even the tallest will not dare to practice or openly to lend support to it. An awakened and intelligent public opinion is the most potent weapon of a Satyagrahi" (*Young India*, August 28, 1929). This suggestion is very useful in the present context, when the dividing line between news and propaganda has become increasingly blurred. The linkage between the media economy and political power is very apparent.

Gandhi offers us a threefold solution to deal with this issue: A peaceful politics of action (for instance, a movement for making the media accountable without compromising the freedom of expression); a politics of discourse that may transform the struggle for human emancipation into a dominant narrative of public life. And finally, a politics of belief and

commitment. For Gandhi, "a person who claims to be a Satyagrahi always tries by close and prayerful self-introspection and self-analysis to find out... whether he is not himself capable of those 'very evils' against which he is out to lead a crusade" (*Young India*, August 28, 1929).

Let us now turn to the third challenge — the problem of political centralisation and the authoritarian structure of political parties. Gandhi approaches this question from a very different vantage point. He identifies political centralisation as an outcome of a systemic process, which is produced and nurtured by professional politicians as well as voters. Recognising the numerical significance of voters in democracy, Gandhi proposes the idea of an informed and morally conscious voter. He writes: "... we need an electorate, which is impartial, independent and intelligent. If the electors do not interest themselves in national affairs... and if they elect men with whom they have private relations or whose aid they need for themselves, this state of things can do no good to the country; on the contrary, it will be harmful" (*Young India*, June 9, 1920). This argument may sound impractical at the moment. But no one can deny the significance of an electoral morality to make democracy more egalitarian and inclusive.

Yadav's invitation to travel with Gandhi as a co-traveller, therefore opens up a new possibility: Gandhi may give us hope, aspiration and intellectual solidarity to think what at the moment seems unthinkable.

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GS 2: INTERNATIONAL RELATIONS

INDIAN EXPRESS PAGE: 13

• DIPLOMACY

SCO meet: The signals from 1st official Indian visit to Pakistan since Op Sindoor

Shubhajit Roy

New Delhi, October 2

INDIA SENT a senior official to Pakistan this week for the Shanghai Cooperation Organisation (SCO) national coordinators' meeting, the first visit by an official Indian delegation since Operation Sindoor last year.

The SCO Council of National Coordinators meets under a rotational annual chair. Pakistan assumed the presidency after the Bishkek summit on August 31-September 1, so the meeting took place in Islamabad.

For India, as an SCO member, attending was an obligation. Despite the state of bilateral ties, Delhi sent Alok Dimri, an Additional Secretary in the Ministry of External Affairs.

It was also the first such visit since External Affairs Minister S. Jaishankar travelled to Pakistan for the SCO heads of government meeting in October 2024. Amid the freeze in bilateral ties, the visit has five key takeaways.

DIPLOMATIC TIGHTROPE

First, India is in a tough diplomatic spot.

The US has been seen to side with Pakistan just as Delhi tries to portray Pakistan as a state sponsor of terrorism. China, Pakistan's all-weather friend, helped it during Operation Sindoor with weapons and satellite intelligence. In this unfavourable environment, Delhi has had to engage with Pakistan and China in multilateral formats. PM Narendra Modi met Chinese President Xi Jinping at the SCO summit in Tianjin, and Xi visited India for the BRICS summit in September.

Engaging with Pakistan at the SCO is a calculated, pragmatic move, since it is better to have situational awareness of how Islamabad plans to conduct its activities under the SCO umbrella. India will watch the tone and direction of Pakistan's SCO-related activities. India hosted a G20 tourism working group meeting in Kashmir in May 2023, and Indian officials will watch whether Pakistan hosts meetings in Pakistan-occupied Kashmir. They will also watch for maps showing India's territories as part of Pakistan or China in SCO documents, banners, posters and other printed or digital material. An Indian

official explained the rationale: "If you are not part of the table, you are on the menu. So, it is important for us to be in the room."

PM MODI'S POTENTIAL VISIT

Second, Pakistan is certain to invite PM Modi to the SCO leaders' summit in Pakistan next year. The dates are yet to be announced, and whether the PM attends will be a political call. India boycotted the SAARC summit in Pakistan and Modi has not travelled there since late 2015, so this is a bridge to be crossed at an opportune time. The SCO meetings will help assess the possibility of a visit.

TRUMP FACTOR

Third, the Russia-Ukraine and US-Iran wars have consumed global attention, with no end in sight. US President Donald Trump's unpredictable behaviour and support for Pakistan Army chief Asim Munir have emboldened Rawalpindi over the past year and a half. India must be careful about the ramifications of any future conflict with Pakistan

as long as Trump is in office, until January 2029. Limited diplomatic engagement, apart from military-level contact, leaves a door ajar for communication.

RESPONDING TO PAKISTANI CLAIMS

Fourth, Delhi will not take provocative statements from Pakistan lying down, as its muscular rhetoric at the SCO foreign ministers' meeting in Goa and at the UN General Assembly this year has shown. Any Pakistani statement on Kashmir or terrorism will draw a strong Indian response.

THE CHINA CHALLENGE

Fifth, the challenge from China is far more consequential for Delhi than Pakistan. The border standoff since May 2020 is the bigger threat. Keeping both fronts calm is a strategic objective for India, and multilateral contacts often help defuse tension.

State of India-Pakistan ties

India-Pakistan ties have been a roller-coaster over the last 12 years. After Narendra

Modi came to power in 2014, he began by inviting SAARC leaders to his swearing-in, and PM Nawaz Sharif attended. The two sides started on a positive note, but India drew a red line: Pakistan's diplomats and ministers could not meet Hurriyat leaders.

In December 2015, then External Affairs Minister Sushma Swaraj travelled to Islamabad and restarted the comprehensive bilateral dialogue. Later that month, Modi made a surprise visit to Lahore to wish Sharif on his birthday. But just a week later, a terror attack on the Pathankot air base disrupted the dialogue. It was followed by the arrest of former Navy officer Kulbhushan Jadhav on charges of spying and terrorism.

In September 2016, the Uri attack was followed by surgical strikes. And things kept getting worse — the Pulwama attack and the Balakot airstrikes took place in February 2019. In August 2019, the abrogation of Article 370 in Jammu and Kashmir led Pakistan to downgrade ties. High Commissioners were recalled, trade was cut off, and all bus and train services were stopped.

Seven years on, New Delhi and Islamabad have held no bilateral talks. India maintains that it desires neighbourly relations, but says the onus is on Pakistan to create an environment free of terror and hostility.

The two sides agreed on a ceasefire in February 2021, which held until terror attacks targeting migrant workers and Kashmiri Pandits. In April 2025, the Pahalgam attack drew a kinetic response from India. In May, the two fought a four-day conflict before a ceasefire. Trump claimed credit for it, which India rejected outright.

India also put out a new anti-terror doctrine, spelt out by Modi in an address to the nation on May 12, 2025. The three pillars of the "new normal" are a guaranteed response to future terror attacks, no differentiation between state and non-state actors, and no let-up in strikes on terrorist infrastructure because of nuclear blackmail.

Pakistan's Army chief, Gen Munir, meanwhile, has heavily courted Trump. Pakistan's diplomatic profile has risen since it brokered the US-Iran ceasefire in June.