DAILY CURRENT AFFAIRS

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RESERVATION MUST NOT BE BASED ON RELIGION, SC

Reservation must not be based on religion, SC tells West Bengal

Krishnadas Rajagopal
NEW DELHI

The Supreme Court on Monday orally observed that reservation must not be based on religion while hearing an appeal filed by the State of West Bengal against a Calcutta High Court judgment striking down its policy to include several castes, largely Muslim communities, in the State's Other Backward Classes (OBC) list.

The High Court had concluded that religion was the "sole criterion for declaring these communities as OBC". It had found the "selection of 77 classes of Muslims as backwards an affront to the Muslim community as a whole".

Senior advocate Kapil Sibal, appearing for the State with advocate Astha Sharma, said the criterion for including Muslim communities in the OBC list was based on backwardness and not religion.

The Bench of Justices B.R. Gavai and K.V. Viswanathan scheduled the case for hearing on January 7.

In an earlier hearing, the top court had asked the State to clarify the nature and scope of the survey undertaken to identify the social and educational backwardness of these communities and their inadequacy of representation in the State public services which warranted their inclusion in the list.

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Context:

- The **Supreme Court,** during a hearing on Monday, **emphasized that reservations should not be based on religion.**
- **The case** involved an **appeal by the West Bengal government against a Calcutta High Court judgment.**
- **The Calcutta High Court judgement** *struck down the inclusion of certain castes, predominantly Muslim communities, in the* ***State's Other Backward Classes (OBC) list.***

Calcutta High Court Ruling:

- The High Court ruled that **religion was the sole criterion for declaring the 77 Muslim communities as OBC,** terming it an affront to the Muslim community.
- The judgment nullified sections of the West Bengal Backward Classes Act, 2012, which allotted 10% and 7% reservation to sub-categories OBC-A and OBC-B.
- The **ruling impacted five lakh OBC certificates** issued since 2010 but **exempted individuals who had already secured employment** using these certificates.

State's Argument:

- Senior advocate Kapil Sibal, representing West Bengal, **argued that the inclusion was based on backwardness, not religion.**
- **Significance: This case raises significant questions about the criteria for determining backwardness and the role of religion in reservation policies.**

Supreme Court Observations:

- Directed the State **to clarify the consultation process with the West Bengal Backward Classes Commission.**
- **Sought details about the survey and evidence used to identify the social and educational backwardness of the included communities.**
- Asked whether adequate representation in State public services was evaluated.

Key criteria and provisions for determining backwardness :

- **Constitutional Provisions:**
  - **Article 15(4):** Allows the **State to make special provisions for the advancement of socially and educationally backward classes (SEBCs)**, Scheduled Castes (SCs), and Scheduled Tribes (STs).
  - **Article 16(4):** Empowers the **State to provide reservations** in **public employment** for **any backward class** that is underrepresented in public services.
  - **Article 340:** Directs the **President to appoint a commission to investigate the conditions of socially and educationally backward classes** and suggest measures for their advancement.
- **Judicial Interpretation:**
  - **Indra Sawhney Case (1992):**
    - The **Supreme Court provided detailed guidelines** for identifying backward classes, emphasizing **social and educational criteria rather than economic factors alone.**
    - Established the **"creamy layer" concept,** excluding the more affluent members of backward classes from reservation benefits.
    - **Backwardness should primarily be determined by social and educational factors, not solely economic criteria.**
- **Mandal Commission (1980):**
  - Suggested parameters such as **social, educational, and economic backwardness** indicators for determining OBCs.

PLACES AND WORSHIP

Places and worship

Supreme Court hearing may decide future of secularism in India

A special Bench of the Supreme Court of India, headed by Chief Justice of India Sanjiv Khanna, will begin hearing on December 12 a batch of petitions that question the validity of the Places of Worship (Special Provisions) Act, 1991, a law that freezes the status of places of worship in the country as on the day of its independence and bars suits that seek to alter such status. It is no exaggeration to say these petitions pose a virulent challenge to the survival of secularism. The outcome may well decide the trajectory of communal relations and the future of secular thought in the country. The 1991 Act does have some exemptions: it did not apply to what was then the Babri Masjid-Ram Janmabhoomi dispute, which ended in favour of the Ram temple. Nor does it apply to monuments, sites and remains covered by the Ancient Monuments and Archaeological Sites and Remains Act, 1958. It will also not apply to any suit that has been finally settled or disposed of, any dispute that has been settled by the parties before the 1991 Act came into force, or to the conversion of any place that took place by acquiescence. The challenge has come in the backdrop of a renewed attempt through motivated litigation by some Hindu organisations and devotees to target mosques such as the Gyanvapi mosque in Varanasi, the Shahi Idgah mosque in Mathura and the Shahi Jama Masjid in Sambhal, among others. Any order that strikes down or dilutes the 1991 law is likely to have a malign influence on these proceedings.

The petitions highlight the demolition of temples by invaders in the past and contend that many mosques have been built on their ruins. The Places of Worship Act, they claim, legalises such depredations, and also violates the right of Hindus and other communities to reclaim their places of worship through legal proceedings. It also violates the right to practise and propagate religion and manage and administer places of worship. Ironically, they also contend that the Act goes against the principle of secularism, which would surely stand to be undermined if their attempts to reclaim these sites succeed. Fortunately, there are some clearly established principles in favour of the Act. In its Ayodhya judgment, a five-member Bench observed that the law "imposes a non-derogable obligation towards enforcing our commitment to secularism". It also called it a "legislative intervention that preserves non-retrogression as an essential feature of our secular values". For the present, it does not seem likely that the Court will depart from the Constitution's secular vision and Parliament's mandate against misusing judicial fora to remedy historical wrongs.

Context:

- **Supreme Court to Hear Challenge to Places of Worship Act, 1991**
- A **special Supreme Court Bench, led by Chief Justice Sanjiv Khanna,** will begin **hearing petitions** on December 12, 2023, **challenging the validity** of the **Places of Worship (Special Provisions) Act, 1991**.
- **Places of Worship (Special Provisions) Act, 1991 aims to freeze the status of places of worship as they existed on August 15, 1947,** and **bars legal suits to alter such status.**
- *The outcome of this case may significantly impact secularism and communal harmony in India.*

Key Provisions of the Act:

- The Act does not apply to:
  - The Babri Masjid-Ram Janmabhoomi dispute (resolved in favor of the Ram temple in 2019).
  - Sites covered under the **Ancient Monuments and Archaeological Sites and Remains Act, 1958**.
  - Disputes **settled or disposed of before the Act came into force.**
  - Conversions of places of worship that occurred by **mutual acquiescence.**

Petitioners' Arguments:

- **Historical wrongs:** Claim that many mosques were built on demolished temples during invasions.
- **Violation of rights:**
  - Hindus and other communities' rights to reclaim places of worship through legal proceedings.
  - Rights to practice and propagate religion and manage religious sites.
- **Secularism:** Ironically, petitioners argue the Act undermines secularism by legitimizing past "depredations."

Targeted Mosques:

- Recent litigation targets mosques such as:
  1. **Gyanvapi Mosque** in Varanasi.
  2. **Shahi Idgah Mosque** in Mathura.
  3. **Shahi Jama Masjid** in Sambhal.

Support for the Act:

1. **Supreme Court's Ayodhya Judgment**:
   - Affirmed the **Act as essential to secularism, preventing the use of judicial processes to address historical grievances.**
   - Declared the Act a **"legislative intervention that preserves non-retrogression"**, reinforcing secular values.

2. **Commitment to Secularism**:
   - The Act ensures that communal harmony is maintained and historical disputes do not threaten societal peace.

Potential Impact:

- Any dilution or striking down of the Act **could embolden efforts to target places of worship and disrupt communal harmony.**
- It could also **challenge the judiciary's commitment to India's secular framework** and **Parliament's intent to avoid retroactive correction of historical wrongs.**
- The Supreme Court's decision will not only influence ongoing disputes but also shape the trajectory of India's secular and communal relations for years to come.

ON REFORMS IN MERCHANT SHIPPING

On reforms in merchant shipping

Have the Merchant Shipping Act, 1958, and the Coasting Vessels Act, 1838 failed in addressing the contemporary needs of the merchant marine sector? What are some of the international maritime conventions that India has ratified? Will the new Bills address maritime training and education as well?

EXPLAINER

Amitabh Kumar

The story so far:

The Government is preparing to introduce several significant bills aimed at driving much-needed reforms in the shipping industry. Key among them are the Merchant Shipping Bill, 2024 and the Coastal Shipping Bill, 2024, both of which promise to bring transformative changes to boost the sector.

Why a new bill?

The Merchant Shipping Act, 1958, and the Coasting Vessels Act, 1838, which the new bills aim to repeal, have become outdated and fail to address the contemporary needs of the merchant marine sector. Significant regulatory gaps exist, particularly for vessels operating in the offshore sector which comprise nearly 50% of Indian-flagged vessels. Furthermore, maritime training was liberalised allowing private sector participation, yet there is no legal framework in the existing Act to regulate their activities effectively.

The Merchant Shipping Act, 1958, also restricts seafarers' welfare provisions to Indian-flagged ships, despite 85% of the 2,80,000 active Indian seafarers working on foreign-flagged vessels. Additionally, the Act lacks enabling provisions for implementing certain international conventions that India has signed or plans to ratify. Crucially, the outdated, license-era provisions of the Act have become a roadblock to modernising maritime administration, which needs to transition from being a mere regulator to a regulator-cum-facilitator, thereby promoting the 'ease of doing business.'

What are the features of the Merchant Shipping Bill?

The Merchant Shipping Bill introduces significant changes to modernise India's maritime framework, drawing upon the best practices of leading maritime jurisdictions like the U.K., Norway, and Singapore. Some of the key reform measures include:

i) Ease of registration: the existing law restricts vessel registration to entities with 100% Indian ownership. The new Bill proposes significant reforms to attract foreign investment. It also reduces the ownership threshold for Indian citizens/entities from 100% to 51%, enabling more flexibility. It allows Limited Liability Partnerships (LLPs), Non-Resident Indians (NRIs), and Overseas Citizens of India (OCIs) to own and register Indian vessels. This is in line with the law of the U.S. where Green card holders are permitted to own American flagships or Singapore law where permanent residents can own ships of their flags. It also permits foreign entities to hold shares in Indian vessels while ensuring majority ownership remains with Indian entities, NRIs, or OCIs.

Additionally, the Bill allows the registration of vessels chartered by Indian entities under the bareboat charter-cum-demise, enabling entrepreneurs to acquire ownership of vessels at the end of the charter period. This provision, particularly beneficial for capital-deficient entrepreneurs, facilitates entry into the shipping industry without upfront investment.

India is the second largest ship recycling centre after Bangladesh, and the ship recycling industry practises the concept of cash purchase of the vessel before it is brought for demolition. Often it becomes difficult for cash buyers to register the vessels for their final voyage, as they no more remain 'seaworthy'. To address challenges faced by the ship recycling industry, the Bill introduces provisions for temporary registration of vessels destined for demolition. This measure is expected to bolster activities at India's ship recycling hubs like Alang.

ii) Enlarging the scope of vessels: the existing Act regulates only mechanised ships (engine-fitted vessels) above a certain size, leaving smaller mechanised vessels and all non-mechanised vessels outside its ambit. This regulatory gap has allowed many vessels to operate without adequate oversight. India's offshore drilling sector gained prominence in 1974 when Sagar Samrat, a merchant vessel designed for exploratory offshore drilling, drilled the first well in Bombay High. Since then, the offshore sector has employed a diverse range of mechanised and non-mechanised vessels, such as accommodation barges, work barges, submersibles, and drones. However, these vessels remain either unregulated or inadequately regulated under the current framework, exposing the sector to operational and safety risks.

The new Bill seeks to address this issue by expanding the definition of 'vessels' to uniformly include a wide range of crafts, including submersibles, semi-submersibles, hydrofoils, non-displacement crafts, amphibious crafts, wing-in-ground crafts, pleasure crafts, barges, lighters, Mobile Offshore Drilling Units (MODUs), and Mobile Offshore Units (MOUs), whether mechanised or not. This definition is expected to enhance transparency and ensure comprehensive regulatory oversight in the offshore sector.

Furthermore, the 26/11 Mumbai attacks, which exploited gaps in maritime security, underscored the urgent need for stricter regulation of all categories of vessels. By empowering authorities to issue instructions to all types of vessels, the new Bill aims to strengthen coastal security, making India's coastline safer and more secure.

Quick change: Catamaran boats pass by a merchant navy ship anchored off Visakhapatnam. FILE PHOTO

What about marine pollution?

The Government has recently undertaken several initiatives to minimise pollution from shipping activities. Some of the measures include reducing the sulphur content in marine fuel from 3.5% to less than 0.5%, banning the use of single-use plastics on Indian ships, and launching the online portal 'Swachh Sagar' to facilitate the proper disposal of ship-generated waste at Indian ports.

The International Maritime Organization (IMO) has adopted several conventions aimed at preventing and combating marine pollution, such as the Civil Liability Convention (CLC), the Convention on Limitation of Liability on Maritime Claims (LLMC), the Bunker Convention, the International Convention for the Prevention of Pollution from Ships (MARPOL), and the Wreck Removal Convention. The existing law, however, has either omitted or partially implemented these conventions. The new Bill fully incorporates these international conventions, aligning India's maritime regulatory framework with global standards. This comprehensive approach reinforces India's commitment to combating marine pollution and safeguarding the maritime environment for sustainable shipping practices.

What are provisions for seafarers'?

The remarkable growth in the number of Indian seafarers employed on foreign-flagged ships over the last 7-8 years stands out as one of the biggest success stories in Indian merchant shipping. The workforce has grown from 1,16,000 in 2015-16 to 2,85,000 today, with nearly 85% of these seafarers serving on foreign-flagged vessels.

However, the existing Act lacks provisions for the welfare and safety of this vast workforce working on foreign-flagged vessels. The proposed Bill addresses this gap by extending the scope of welfare measures initiated by the Union government to include Indian seafarers working on foreign-flagged ships as well. Furthermore, it seeks to extend the protections and benefits outlined in the Maritime Labour Convention (MLC) to all Indian seafarers, ensuring better working conditions, safety standards, and support systems for those contributing to the global maritime industry.

What about maritime training?

Under Entry 25 of List 1 (Union List) of the Constitution, the Union Government is responsible for the education and training of the mercantile marine and the regulation of such education and training provided by States and other agencies. In the past, maritime training was primarily conducted by government-run institutions directly under the administrative control of the maritime regulator, the Director General of Shipping. Consequently, there was no need for a specific legal framework to regulate these institutions.

However, following economic liberalisation, maritime training was opened to the private sector. Today, over 160 maritime training institutes operate across the country, yet their activities are governed solely by rules, government orders, and notifications rather than an enabling legal framework. This regulatory gap has allowed unauthorised institutes to operate without obtaining proper approvals, making it challenging for the maritime administration to take action against offenders.

The proposed Bill seeks to address this significant anomaly by introducing clear legal provisions for regulating maritime training in line with the constitutional mandate. This step is expected to eliminate illegal maritime training institutes and associated fraudulent practices, which often exploit unsuspecting rural youth, while ensuring the delivery of high-quality, standardised maritime education nationwide.

Is there a focus on coastal shipping?

The Government has taken a significant step by distinguishing between the technical regulation of ships and the commercial utilisation of Indian coastal waters, removing provisions related to the latter from the Merchant Shipping Act. These aspects, including licensing, permissions for operations along the Indian coast and Exclusive Economic Zone (EEZ), creation of a coastal plan involving the Union and States, and the integration of inland and coastal shipping, have been incorporated into the proposed Coastal Shipping Bill, 2024. This focused approach aims to foster growth and development of the Indian coastal sector.

The move aligns with the Government's flagship 'Sagarmala' program, which emphasises the promotion of coastal shipping through initiatives like dedicated berths for coastal vessels and enhanced hinterland connectivity for coastal cargo movement. Infrastructure development and a robust regulatory framework must progress simultaneously, making the introduction of the Coastal Shipping Bill both timely and essential.

Maritime development, like any developmental initiative, should remain bipartisan and above party politics. By fostering investment, enhancing safety, combating marine pollution, and supporting seafarers' welfare, the proposed reforms promise to unlock the true potential of India's maritime sector.

Amitabh Kumar is Former Director General Shipping, Government of India. Views expressed are personal.

THE GIST

- The Merchant Shipping Bill, 2024 introduces significant changes to modernise India's maritime framework, drawing upon the best practices of leading maritime jurisdictions like the U.K., Norway, and Singapore.
- Under Entry 25 of List 1 (Union List) of the Constitution, the Union Government is responsible for the education and training of the mercantile marine and the regulation of such education and training provided by States and other agencies.
- The Government has recently undertaken several initiatives to minimise pollution from shipping activities. Some of the measures include reducing the sulphur content in marine fuel from 3.5% to less than 0.5%, banning the use of single-use plastics on Indian ships etc.

- Reforms in India's Maritime Sector
- Key Proposals in **Merchant Shipping Bill, 2024** and
- Key Proposals in **Coastal Shipping Bill, 2024**

❖ **Aimed at modernizing India's maritime industry and addressing regulatory gaps.**

Why a new bill?

- **Outdated Laws**: The **Merchant Shipping Act, 1958** and **Coasting Vessels Act, 1838**, which the new bills seek to repeal, **can not meet modern maritime challenges.**
- **Regulatory Gaps**: 1. **Offshore vessels lack adequate oversight.** 2. **Maritime training,** liberalized to include private sector participation, **operates without a robust legal framework.**
- **International Conventions**: The outdated framework hampers the implementation of conventions signed by India, such as the **MARPOL** and **Bunker Convention**.
- **Ease of Doing Business**: License-era provisions hinder maritime administration's transition from regulator to facilitator.

Key Features of the Merchant Shipping Bill

- **Modernizing Vessel Registration**:
  - Reduces Indian ownership requirements from 100% to 51%.
  - Permits ownership by **NRIs**, and **OCIs**, aligning with global best practices.
  - Introduces **bareboat charter-cum-demise registration**, enabling entrepreneurs to acquire vessels post-charter.
  - Provisions for temporary registration of vessels intended for recycling **to support India's ship-recycling hubs like Alang.**
- **Expanding Vessel Scope**:
  - Covers smaller mechanized vessels, non-mechanized crafts, and offshore assets like **drones**, and **submersibles**.
  - **Strengthens coastal security** by empowering regulation of all vessel types, addressing gaps highlighted by the 26/11 Mumbai attacks.
- **Seafarer Welfare**:
  - Extends welfare measures to Indian seafarers on foreign-flagged ships.
  - Aligns with the **Maritime Labour Convention (MLC)**, enhancing safety and working conditions.
- **Combating Marine Pollution**:
  - Incorporates international conventions like **MARPOL**. **(International Convention for the Prevention of Pollution from Ships)**
  - Introduces measures like **reducing sulphur content in marine fuel and banning single-use plastics.**
- **Maritime Training**:
  - Establishes a **legal framework for regulating over 160 maritime training institutes.**
  - Aims to eliminate unauthorized institutes and ensure quality education, protecting aspiring seafarers from fraudulent practices.
- The **Coastal Shipping Bill, 2024** focuses on streamlining coastal shipping by separating rules for using Indian coastal waters from technical ship regulations.

Key Points:

- **Easier Approvals**: Simplifies licensing and permissions for coastal shipping.

- **Better Integration**: Links inland and coastal shipping to grow the sector.

Link to Sagarmala:

- Promotes **dedicated coastal berths** and better connections to inland areas to boost cargo movement along the coast.
- These reforms aim to:
  - **Attract more investment** in India's shipping sector.
  - Improve safety and **protect the environment.**
  - Strengthen coastal trade and infrastructure through the **Sagarmala Program**.
  - Benefit seafarers, business owners, and coastal communities.
- The new laws show India's dedication to modernizing its maritime industry, staying competitive globally, and promoting sustainable growth.
- The **Sagarmala Program** is an initiative by the Government of India aimed at promoting port-led development and improving the country's maritime infrastructure.

Previous Year Question

Q.1 Which of the following were the key outcomes of the Indra Sawhney case (1992) as per the Supreme Court's judgment?

1. The Court emphasized that backwardness should be primarily determined by social and educational factors, rather than economic criteria alone.
2. The concept of "creamy layer" was introduced, excluding the more affluent members of backward classes from the benefits of reservation.
3. The judgment allowed the inclusion of economically weaker sections from forward castes in the reservation scheme.
4. The case led to the complete exclusion of economic factors in the determination of backwardness.

Select the correct answer using the code below:

(a) 1 and 2 only
(b) 1, 2, and 3 only
(c) 2 and 4 only
(d) 1, 3, and 4 only

Q.2 Which of the following does not fall under the purview of the Places of Worship (Special Provisions) Act, 1991?

1. Places of worship of Christians and Sikhs.
2. Sites covered under the Ancient Monuments and Archaeological Sites and Remains Act, 1958.
3. Disputes settled or disposed of before the Act came into force.
4. Conversions of places of worship that occurred by mutual acquiescence.

Select the correct answer from the options below:

(a) 1, 2, and 3 only
(b) 1 and 2 only
(c) 2, 3, and 4 only
(d) 1, 2, 3, and 4