

RIGHT TO TAKE COGNIZANCE BY INSTITUTIONS: LEGAL DISCOURSE

by

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ABSTRACT

Constitution of India aims to provide social, economic and political justice to its citizens by the establishment of regular Courts of law throughout the country. However, the pre-litigation and alternative dispute resolution mechanisms have gathered importance in the recent years. These institutions confer authority to the individual litigant/s to choose an arbitrator by way of an arbitration agreement for the settlement of disputes, or a mediator. The award rendered by an arbitral tribunal and the Lok adalat have been conferred the status of 'decree' of a Court of ordinary original civil jurisdiction.

Hon'ble Supreme Court by its order dated 08.07.2021¹ sanctioned the legal validity of summons issued by the in-house Committee of Delhi State Legislative Assembly² for appearance³ of officers of the Facebook company. The issue for determination was whether the Peace and Harmony Committee could take cognizance in the matter in which Delhi police has inherent jurisdiction? There is wide media reportage with reference to the judgment on issuance of summons. This paper therefore, endeavours to

¹ “The committee has the right to seek information on any matter related to peace and harmony without encroaching on any subject under the seventh schedule (allocation of powers and functions between Union and states),” the court said. see <https://theprint.in/judiciary/wont-quash-summons-to-facebook-in-riots-case-but-delhi-panel-cant-probe-law-order-issue-sc/692229/> (last visited 04.08.2021).

² The Supreme Court on Thursday upheld the authority of **Delhi Assembly's Peace and Harmony Committee** to summon Facebook India's senior official Ajit Mohan in connection with the February 2020 communal violence, saying the Capital can ill-afford another riot, and the **role of Facebook** “must be looked into” in this context. SEE <https://www.thehindu.com/news/national/sc-backs-summons-to-fb-from-delhi-govt-riots-panel/article35222556.ece> (last visited 04.08.2021).

³ This came on plea filed by Mohan, Facebook India Online Services Pvt Ltd and Facebook Inc who contended that the Delhi Assembly Committee lacks the power to summon or hold petitioners in breach of its privileges for failing to appear. see <https://news.abplive.com/news/india/riots-case-sc-dismisses-facebook-india-vp-s-plea-challenging-summons-by-delhi-assembly-committee-1468209> (last visited 04.08.2021).

analyse the tenets of law which confer authority to an institution in its individual capacity to take cognizance in the matter. This analysis would be made in the light of the prevalence of institutions of alternative dispute resolution.

FULL PAPER:

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1. India is a Union of States. Constitution of India establishes it to be a quasi-federal country which means there is bias towards Centre for resolution of disputes in matters of national importance or for which the Constitution specifically provides. If, for example, any aggression, rebellion, riot, etc. is likely to be incidental in a State for which any team at national level initiates investigation, whether the State police can or cannot interfere? This question has been of significance in the petition in various States where the party in power at the Centre and that in the State belong to differing ideologies.

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2. The answer is the State police as well as the national team for investigation have concurrent responsibility to maintain law and order to protect life⁷, liberty⁸ and property⁹ of its citizens. However, the State police may continue
 - (i) investigation on different issues; or
 - (ii) in cases where there is no such team for investigation specifically appointed by the Government at national level.

Therefore, though there is separation of powers and concurrent jurisdiction to maintain law and order for both Centre and State(s) but none of them are legally constrained (barred) from carrying the investigation.

3. The quasi-federal model of governance is also applicable in case of institutions that are related to Centre and State because these institutions are bound to function in consonance with the provisions of Constitution of India and the mode of governance it do envisage, provided there is no legal restriction or sanction for particular method of governance.
4. It would be pertinent to note that seventh Schedule to the Constitution of India provides for Union List, State List and Concurrent List., The Concurrent List provides for concurrent jurisdiction of Centre and State in respect of certain matters¹⁰ irrespective of the fact that they have their exclusive jurisdiction for same matter(s) in the Union List¹¹ or State List¹². On mechanism of separation of powers¹³, certain provisions like Article 50¹⁴ of the Constitution of India are significant.

⁷ Article 21 of the Constitution of India.

⁸ Articles 19 and 21 of the Constitution of India.

⁹ Article 31A read with article 300A of the Constitution of India.

¹⁰ Entry 2 to List III to the Seventh Schedule to the Constitution of India provides: 'Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution'. Thus, these matters also include the police functions, i.e. maintenance of law and order, security of State, maintenance of public order, etc.

¹¹ Entry 2A to List I to the Seventh Schedule to the Constitution of India provides: 'Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment'. Thus, this entry authorises the Centre to deploy armed forces of the Union in any State. Such deployment is within the ambit of the term 'police function' of the State.

¹² Entry 2 to List II to the Seventh Schedule to the Constitution of India provides: 'Police (including railway and village police) subject to the provisions of entry 2A of List I'. Thus, excluding the police forces or armed forces referred to in Entry 2A of List I to the Seventh Schedule to the Constitution of India, the police administration comes in the plenary power of the State.

¹³ While separation of powers is key to the workings of American government, no democratic system exists with an absolute separation of powers or an absolute *lack of* separation of powers. Governmental powers and responsibilities intentionally overlap; they are too complex and interrelated to be neatly compartmentalized. As a result, there is an

5. In *Dr. Ram Manohar Lohiya v. State of Bihar*¹⁵ Court held that there are three concentric circles, law and order, public order and security of State.¹⁶ Each of these subjects have been classified based on its severity but all of them are comprised in police function of the State usually or Centre, in some cases.
6. The issuance of summons to the officials of the facebook company as a part of investigation by the Delhi State Legislature may be contestable on the ground of parallel¹⁷ investigations by the police and the in-House Committee of Peace and Harmony and legally prohibited by the concept of 'double jeopardy'¹⁸. This concept of double jeopardy would not apply in the facts of present case because:
 - (i) the proceedings of in-House Committee of Delhi State Legislature are not aimed to pronounce a judgment of conviction or acquittal;
 - (ii) the in-House Committee of Delhi State Legislature is empowered to initiate disciplinary inquiry against its officials and such administrative inquiry is separate from any criminal trial.
7. These assertions affirm that the jurisdiction to take cognizance or initiate investigation on an issue that is of prime importance with respect to the maintenance of law and order inside the House of Legislature is inherent in their in-house Committee. However, the State police or Central police may step-in in their discharge of police functions and investigate the matter. But the officers of in-House Committee are not constrained to leave their duty to investigate because:
 - (i) they have inherent jurisdiction in matters that directly or indirectly concern the peace and harmony of House;

inherent measure of competition and conflict among the branches of government. see <https://www.ncsl.org/research/about-state-legislatures/separation-of-powers-an-overview.aspx>

¹⁴ The State shall take steps to separate the judiciary from the executive in the public services of the State.

¹⁵ AIR 1966 SC 740.

¹⁶ One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State.

¹⁷ <https://timesofindia.indiatimes.com/india/delhi-house-panel-can-summon-facebook-supreme-court/articleshow/84253933.cms> (last visited 04.08.2021).

¹⁸ Article 20(2) of the Constitution of India provides for 'double jeopardy'. Similarly, section 300 of the Code of Criminal Procedure 1973 provides the same concept and is known by the terms 'autrefois convict' and 'autrefois acquit'.

- (ii) the term 'peace and harmony' may be interpreted to be a substratum of 'law and order' but it does not purport any specific prohibition from carrying out tasks that may check the breach of law and order;
- (iii) the in-House Committee is endowed with prime obligation to investigate even in cases of reluctance of police authorities;
- (iv) the in-House Committee always reserves its right to commence disciplinary proceedings on its employees.

It is necessary to quote the observation by the Hon'ble Supreme Court with reference to the powers and functions of the Delhi Legislative Assembly on the issue of summoning the officials of the facebook company:

"The court said that the legislative powers of the assembly cannot be confined to only enacting laws. They also have inquisitorial and recommendatory powers which can be utilized for better governance. Thus, water-tight compartmentalization of the assembly's core/essential and non-essential functions is not advisable by the court. According to the court, the committee must act as per its functional mandate specified by the assembly or the assembly must not lack jurisdiction to deal with the subject matter."¹⁹

Therefore, in absence of any legal provision that may specifically empower the Delhi police or withdraw authority, to summon witnesses, from the in-House Committee, the Peace and Harmony Committee of Delhi State Legislature is having its inherent jurisdiction to take cognizance of issues that may interfere with the Peace, Harmony, security or institutional integrity of the House of State Legislature. This judgment, thus, also empowers every institution to investigate the matter autonomously irrespective of the cognizance by the police authorities of the State.

¹⁹ <https://www.jurist.org/news/2021/07/india-supreme-court-facebook-must-appear-before-panel-probing-delhi-riots/> (last visited 04.08.2021).