

Amid pandemic, economic woes and stark inequality, the Union Budget sends a troubling message

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Khinraj Jangid

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As Israelis protest plan to change judicial selection panel, is there a lesson for India?

Orthodox and ultra-religious groups, with a majority in parliament, aim to shackle the supreme court, Israel's only check on the government.



A protest in Tel Aviv on February 11. | Reuters

Israel has seen an unprecedented number of political protests and strikes against the government of Benjamin Netanyahu for the last month and a half. On February 13, close to 10 lakh people staged a nation-wide strike and around one lakh gathered in front of the parliament in Jerusalem.

What has mobilised one of the strongest public protests in decades is the Netanyahu government's controversial plan for judicial reforms: changing the composition of the committee that appoints judges to give a decisive edge to the parliamentarians in selecting judges, limiting judicial overview of the legislature and ending the judicial review system.

For Indians, this would seem to echo the debate instigated by the ruling Bharatiya Janata Party about the flaws in the collegium system under which judges are appointed.

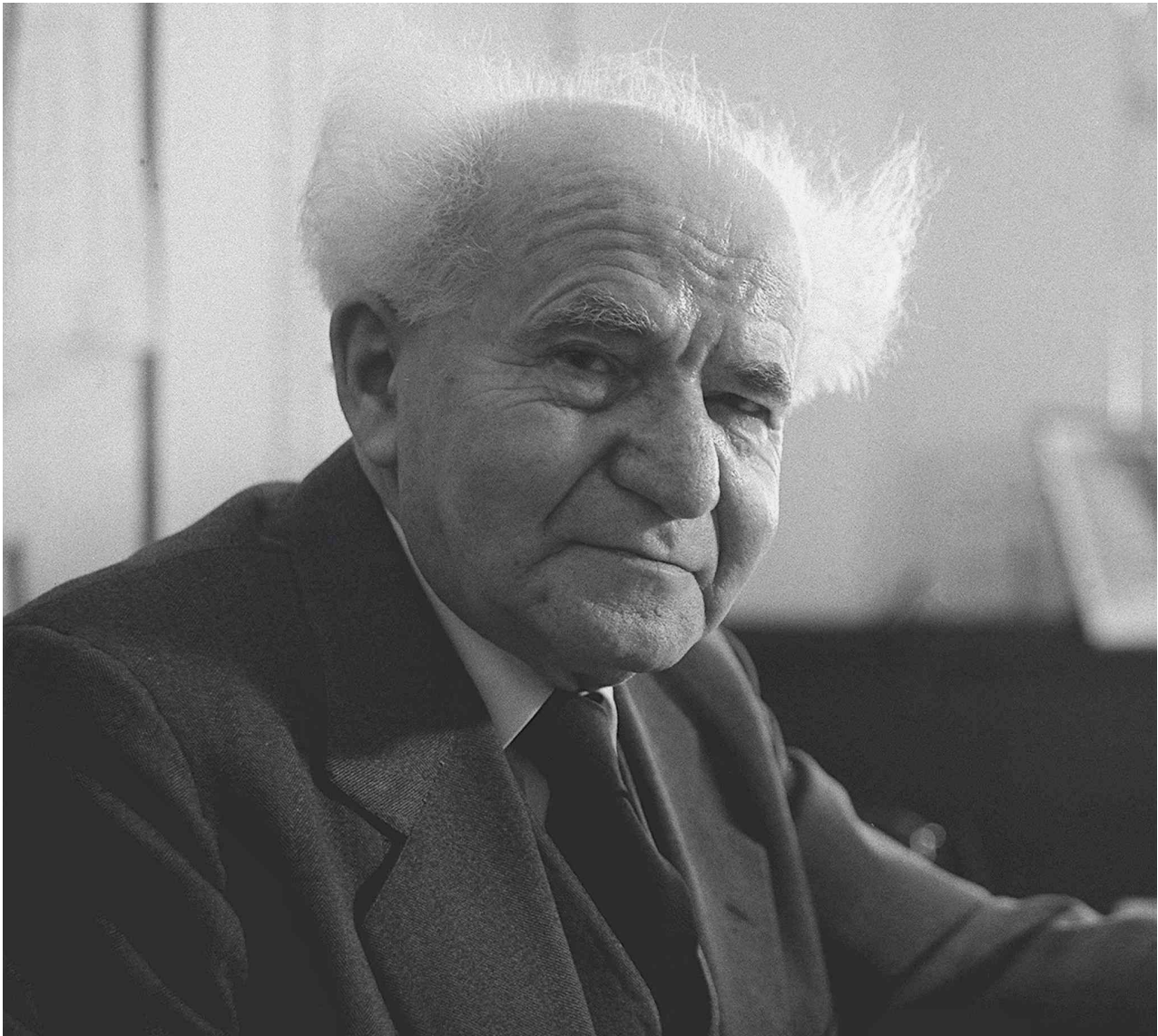
“This overhaul of the judicial system may grant the government total control over the appointment of judges, including Supreme Court judges, and it can also severely limit the High Court of Justice’s ability to strike down legislation as well as allow the parliament to re-legislate laws with a simple majority,” said *The Times of Israel*.

Key principles such as the separation of power or checks-and-balances are under threat. Three out of four Israelis – according to one survey – think democracy in Israel is endangered because of the proposed judicial reforms. In addition, many of Netanyahu’s own right-wing loyalists have been hitting the streets after the prime minister, himself under trial, defended cabinet minister Aryeh Deri who was ousted by the courts due to past wrongdoings and criminal convictions.

A country without a Constitution

Israel’s founding Prime Minister David Ben-Gurion had a low opinion of jurists and did not bother much with drafting a constitution after the establishment of Israel. Till date, Israel does not have one. It works with 14 Basic Laws incrementally developed over 75 years. Jurists were a nuisance as far as Ben-Gurion was concerned because he thought “they don’t know the meaning of statesmanship and policy is made by policy makers not by legalists”.

Ben-Gurion was a socialist and democratic leader who did care about the rule of law, but encouraged the centralisation of power. Over time, the Israeli political system evolved out of ad-hoc-ism – *combina* (akin to “jugaad”) as the Israeli way of life is known for.



Israel's founding Prime Minister David Ben-Gurion. Fritz Cohen, Public domain, via Wikimedia Commons.

“Our country has no constitution, no bill of rights, no federal distribution of power, no presidential veto, and only a single house of parliament, which is controlled by the executive branch by virtue of its parliamentary majority,” noted Yohanan Plesner, president of the Israel Democracy Institute. “A simple majority in the Knesset can [parliament] – and often does – alter the foundations of our democratic regime”.

According to Plesner, “From an institutional perspective, there has been only one check on the otherwise absolute power of any parliamentary coalition: Israel’s supreme court.”

Political move against judiciary

The country’s supreme court has been confronted by many pockets of Israeli society over the years. For example, it is too liberal for the ultra-orthodox and religious communities that do not agree to its principles of equality for women, the queer community and even non-orthodox Jews.

For the ultra-nationalist and radical Jewish groups, the supreme court often appeases the Arab minorities in Israel rather than adhering to the Jewish-nationalist ethos. Many Mizrahi Jews (from Arab and Muslim countries) oppose it because for them it is too elitist institution run by the Ashkenazi Jews (with roots in Europe) who are privileged enough to be the judges and attorneys.

Most of such sentiments are shared by the main political actors of the current coalition. Netanyahu, too, once stood for the autonomy of the judiciary but now due to his own legal impediments thinks the judiciary needs tinkering with.

According to 2018 data from the Central Bureau of Statistics, 45% of Jewish Israelis describe themselves as secular, 25% as traditional, 16% as religious or very religious and 14% as ultra-orthodox. The current government that has a majority (64 out of 120 seats) in the parliament is overwhelmingly dominated by the religious and ultra-religious segments.

After a long time, the right-wing coalition has found itself strong and stable, and it is taking this rare opportunity of power in the parliament to change the rules of the game by changing the justice system. It is weakening the judiciary for the millions of Israelis who have put up a strong fight for the independence of the institution.

There has been an unwritten status quo among the religious and non-religious Jews in Israel. Right from the beginning, the ultra-religious had an agreement with Ben-Gurion that they be exempted from compulsory military service because they must practice religion rigorously.



People wave pride flags during a protest in Tel Aviv on February 18. Credit: Reuters.

They also sought and got autonomy for educating their children and subsidies for their synagogue-going religious-men and their families. Crucially, they secured religious laws for marriage, divorce, and burial. Ben-Gurion made a hasty deal with these demands as he thought orthodox religion would wither away due to the spread of Western modernity.

Much like India's first prime minister Jawaharlal Nehru, Ben-Gurion was over-optimistic of the age of rationality. Both did not take the religiosity of their people seriously and were modernists in awe of western enlightenment. Nehru did care enough for the Constitution, and thanks to him Indian democracy is far more deep and stable than many other countries in Asia.

Following this deal, a status quo was accepted by the secular, liberal or non-religious Israelis who have lived with the restrictions on civil marriages, divorces, the bar on activities on the Sabbath – each Saturday – and more.

Now that the religious and ultra-orthodox are using their power to make fundamental systemic changes, others feel they will lose their liberal democratic space.

Netanyahu and others in government appear resolute while Israel President Isaac Herzog has requested for a consensus amid the growing agitation on streets. Lakhs of Israelis have braved harsh winter rains to come out every Saturday and they are gaining more and more footing each week as the numbers against Netanyahu rise.

The protests are one of the defining political-ideological moments in Israel that can reshape not only the nature of life today but also the future directions.

Khinraj Jangid is an Associate Professor and Director at Centre for Israel Studies, Jindal School of International Affairs, OP Jindal Global University, Sonapat. His email address is kjangid@jgu.edu.in.

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