Legally enabling

The HIV/AIDS Bill provides a solid base for further empowerment and treatment access

The HIV and AIDS (Prevention and Control) Bill passed by Parliament does not guarantee access to anti-retroviral drugs and treatment for opportunistic infections, but there is no denying that it is a good base for an active health rights movement to build upon. Understandably, HIV-positive people in the country, estimated at over 21 lakh, are disappointed that the Centre's commitment to take all measures necessary to prevent the spread of HIV or AIDS is not reflected in the Bill, in the form of the right to treatment. The law only enjoins the States to provide access "as far as possible". Beyond this flaw, though, the legislation empowers those who have contracted the infection in a variety of ways: such as protecting against discrimination in employment, education, health-care services, getting insurance and renting property. It is now for the States to show strong political commitment, and appoint one or more ombudsmen to go into complaints of violations and submit reports as mandated by the law. Here again, State rules should prescribe a reasonable time limit for inquiries into complaints, something highlighted by the Standing Committee on Health and Family Welfare that scrutinised the legislation.

Access to insurance for persons with HIV is an important part of the Bill, and is best handled by the government. The numbers are not extraordinarily large and new cases are on the decline, according to the Health Ministry. Data for 2015 published by the Ministry show that two-thirds of HIV-positive cases are confined to seven States, while three others have more than one lakh cases each. Viewed against the national commitment to Goal 3 of the UN Sustainable Development Goals – to "end the epidemic of AIDS" (among others) by 2030 – a rapid scaling up of interventions to prevent new cases and to offer free universal treatment is critical. Publicly funded insurance can easily bring this subset of care-seekers into the overall risk pool. Such a measure is also necessary to make the forward-looking provisions in the new law meaningful, and to provide opportunities for education, skill-building and employment. As a public health concern, HIV/AIDS has a history of active community involvement in policymaking, and a highly visible leadership in the West. It would be appropriate for the Centre to initiate active public consultations to draw up the many guidelines to govern the operation of the law. Evidently, the requirement for the ombudsman to make public the periodic reports on compliance will exert pressure on States to meet their obligations. In an encouraging sign, the Supreme Court has ruled against patent extensions on frivolous grounds, putting the generic drugs industry, so crucial for HIV treatment, on a firm footing. The HIV and AIDS Bill may not be the answer to every need, but it would be a folly not to see its potential to make further gains.

Mr. Erdogan rising

The stage is set for Turkey's strongman to assume even more power

The path is now clear for Turkey to be transformed from a parliamentary democracy to a presidential republic, after a referendum on constitutional reforms proposed by the ruling Justice and Development Party (or AKP) gave the nod for handing sweeping powers to President Recep Tayyip Erdogan. The "Yes" campaign won by a relatively narrow margin, with a little more than 51% of the vote, and the opposition Republican People's Party (CHP) cited irregularities, including the use of unstamped ballot papers. The three biggest cities, Istanbul, Ankara and Izmir, voting "No" also indicates that much work remains to be done by the incumbents to bridge the rift within the polity. However, the head of the electoral body said the vote was valid. This remarkable turn of events, which will echo through the region and beyond, marks a step change from Turkey's historical tryst with representative democracy. The idea of major constitutional reforms of this sort has been in the making at least since 2014, when Mr. Erdogan became Turkey's first directly elected president. Nevertheless, many in Turkey and elsewhere, including anxious liberals across the EU, will watch with concern as the 18 major reforms on the table now will centralise power to an unprecedented extent in Mr. Erdogan's hands, raising valid questions about the separation of powers in the Turkish government.

The new executive powers that will accrue to Mr. Erdogan if he wins the 2019 elections, a very likely outcome, include the abolition of the post of Prime Minister and the transfer of that power to the President; authority to appoint members to the judiciary; and the removal of the bar on the President maintaining party affiliation. These changes could presage overwhelming AKP control of state institutions, which in turn could lead to, for example, a purge in the judiciary and the security forces. Mr. Erdogan has in the past accused the judiciary of being influenced by the U.S.-based Islamic preacher, Fethullah Gülen, besides attacking members of the security forces in the aftermath of the failed coup in July 2016. That these fears are not exaggerated is clear from the fact that tens of thousands of officials have been dismissed and dozens of journalists and opposition politicians arrested since that time, not to mention Mr. Erdogan's diplomatic spats with the Netherlands and Germany during the harsh campaign leading up to the referendum. Turkey today faces myriad problems, many stemming from the civil war in Syria. But the greatly empowered Mr. Erdogan would do well to design his future policies not only as a reaction to these forces but also as the means to enhance Turkey's unique effort in reconciling pluralist democracy with political Islam, and Western-style liberalism with populist nationalism.

Why the Jayalalithaa case matters

By dismissing Karnataka's review petition, the Supreme Court might have struck a blow against public interest

B.V. ACHARYA

The late Chief Minister J. Jayalalithaa's 20-year-old Disproportionate Assets (DA) case is no ordinary one. Its ramifications, legally, in the country are wide-ranging and severe. A case regarding acquisition of disproportionate assets by a public servant, under the Prevention of Corruption Act, stands on a slightly different footing from an ordinary criminal case. In the case of possessing disproportionate assets, the allegation is that a public servant amasses wealth by illegal means and the object of law is not merely to punish the offender but also to see that the offender or his/her legal representatives do not own or enjoy such illegally acquired assets.

The Chief Minister passed away on December 5, 2016. Orders in the DA case had been reserved six months prior to this, after all hearings had concluded on June 7, 2016. On February 14, the Supreme Court upheld the 'guilty' verdict of the Bengaluru trial court, sending the other three accused – V.K. Sasikala, J. Ilavarasi and V.N. Sudhakaran – to jail, with a penalty of ₹10 crore each. The first accused, Jayalalithaa, was no more and hence the court held that the charges against her had abated.

On March 21, the State of Karnataka filed a review petition challenging that part of the order which held that the case against Jayalalithaa had abated. Our argument was that when the death of the accused takes place long after the arguments are concluded but before a judgment is pronounced, there will be no question of abatement of appeal.

But the Supreme Court, by dismissing on April 5 the review petition filed by the State of Karnataka, missed an opportunity to settle this issue. Consequentially, what the highest court of the country has done is to set a bad precedent in helping corrupt public servants.

Take the instance of an accused public servant choosing to commit suicide after acquiring huge property by illegal means. Legal representatives or heirs of the accused, according to the Supreme Court, can later enjoy the benefits of the illegally accrued wealth and property left behind, as the case against the accused public servant abates. This is a retrograde step in the march towards eradication of corruption in public life.

The question of abatement

Apart from the question as to whether a criminal appeal filed with leave under Article 136 of the Constitution of India will ever abate on the death of the accused, this particular case raised other equally important questions regarding alleged abatement where death has taken place after conclusion of the arguments and the judgment was reserved.

It is settled law that there is no hiatus (a break or a gap) between the date of conclusion of arguments and the date on which the judgment is ultimately delivered. A judgment is expected to be pronounced immediately after the conclusion of the arguments and pronouncing the judgment on a later date is only for the convenience of the court. Any event occurring between the date the judgment is reserved and the actual

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date it was delivered on could not have any effect on the judgment which is ultimately pronounced.

Order XXII Rule 6 of the Code of Civil Procedure in unambiguous terms states that there will be no abatement of an appeal if the death is after judgment is reserved. It further clarifies that such judgment pronounced shall have the same force and effect as if the judgment was delivered on the date on which the arguments were concluded.

The Supreme Court itself has constitutionally applied this rule in quite a few civil appeals by holding that there is no abatement of appeal where the death is after the judgment was reserved. The Supreme Court rules also provide that in the case of an election petition, the proceedings will not abate on the death of a candidate if death is after judgment is reserved once arguments are concluded.

There is no principle or authority which can be pressed into service to hold that a different view is possible in the case of a criminal appeal. The Supreme Court, in clear terms, held that the provisions of the Code of Criminal Procedure are not applicable to the appeals filed before the Supreme Court, by applying for Special Leave under Article 136 of the Constitution, though for the purpose of uniformity principles therein can be applied in suitable cases. The Supreme Court rules also do not provide for abatement of any criminal appeal. It can therefore be safely concluded that there is no constitutional or statutory provision providing for abatement of appeal, especially in a case where death has taken place after the judgment is reserved.

The abrupt conclusion of the Supreme Court that the appeal against Jayalalithaa has abated ignores the above said principle of law. It is also relevant to note that the case was never posted for further hearing after the death of the accused.

When judgment was pronounced on February 14, the court stated that the case against Jayalalithaa had abated, without any discussion on the questions involved. This finding was recorded without hearing the parties. Under the circumstances, it would have been appropriate for the Supreme Court to at least afford an opportunity to the parties to address arguments on this question and take a suitable decision. However, the court dismissed the review petition on merits, rejecting the request for oral hearing.

The legal implications arising out of the death of the accused after the judgment is reserved was not debated but the dismissal was recorded based on an erroneous view of law. The principle of *sub silentio* (action taken without notice, in legal terms) is thus applicable to the facts of the present case.

Reasons for review petition

In a section of the media an erroneous impression has been created that the State of Karnataka, in its greed to collect the fine amount of ₹100 crore imposed on Jayalalithaa by the trial court, has filed the review petition. The DA case was originally filed by the State of Tamil Nadu and Karnataka had to step into the case only after the direction of the Supreme Court, which transferred the case on a finding that the process of justice was being subverted in Tamil Nadu as the main accused held the post of Chief Minister of the State at the time.

The Supreme Court declared that the State of Karnataka is sole prosecuting agency in the case. It is only in obedience of the order of the Supreme Court that Karnataka has performed its role as sole prosecuting agency, so that there was a fair trial of the case. The State of Karnataka has no individual interest in the matter. The fine amount collected as also the confiscated assets could only benefit Tamil Nadu. Karnataka is not a beneficiary.

The right of the State of Karnataka is only for reimbursement of the expenses incurred in connection with the litigation (legal expenses) as ordered by the Supreme Court. Karnataka filed the review petition as it felt that an important question of law has been erroneously decided. It has chosen to do so only to fulfil its constitutional obligations. Now that the review petition has been dismissed, the case has ultimately reached its logical end. Karnataka can have the satisfaction of knowing that it has effectively performed the obligations imposed on it by the Supreme Court.

B.V. Acharya served as special public prosecutor and special counsel in the disproportionate assets case involving the late Tamil Nadu Chief Minister Jayalalithaa and AIADMK general secretary V.K. Sasikala

Understanding crowd dynamics

In human-animal conflicts, there is little reflection on the role of people in inciting a wild animal

NEHA SINHA

Anyone scanning the headlines for the past month would conclude that India is in the throes of irrevocable human-wildlife conflict. In this time period, a tiger was crushed by a JCB machine near Corbett while a mob screamed on, a leopard was burnt in Sariska by a crowd which also stoned forest department personnel, and a 33-member herd of elephants is being teased daily by a mob in Athgarh, Odisha.

Close encounters

In the encounters between a wild animal and a group of people, there are casualties on both sides. The question is, is conflict truly irrevocable? In several cases of conflict this year, it has been noted that groups of people have prevented the forest department from carrying out its duties. Rather than only focussing on a wild, snarling animal, a greater understanding of crowd dynamics is also called for.

A group of people is often defined as a mob if the group becomes unruly or aggressive. One must also consider if the mob has a collective conscience or whether it simply follows the cues by leaders within it. How it gets composed, and what it wants are also important.

PTI

After a leopard entered a school in Bengaluru last year, a group of about 5,000 people surrounded the school. The fact that it is dangerous to be in the vicinity of a panicked leopard is belied only by the absurdity of the fact that most wanted to see the animal and take pictures. In the case of elephants in Athgarh, conservationists have documented a mob of people attacking the elephants almost daily. Activists say this is a form of entertainment for the people concerned, as the elephants are not always harming people. While there is potential for serious conflict or injury, the mob also feels safe in its numbers.

Other mobs that have gathered around wildlife have clamoured for instant 'justice', gratification or resolution – in the form of killing the animal, beheading it, or parading it after its death. In Sariska last month, a leopard, blamed for killing a man, was burnt alive; the mob also hurt forest department officials. In a case last November, a leopard was bludgeoned to death in Mandawar, Haryana. The symbolic control of an animal by killing it and then parading the carcass has not escaped judicial attention. A December order of the Uttarakhand High Court said that if animals were (legally) put down, their dead bodies could not be displayed or shown in the media.

But in perhaps the most visceral and tragic human-wildlife conflict of recent times, a tiger was crushed by a JCB near Corbett after a mob demanded 'justice' for deaths. Two people from a labour camp working in forests near Corbett died after being reportedly attacked by the tiger. The forest department was caught in a human conflict situation – a crowd of people did not allow officials to do their difficult job of catching the tiger. The terrain was undulating. In its haste, the forest department brought in a JCB to capture the animal. The JCB attempted to 'pick up' the tiger, akin to sandpaper being used to snatch up a protesting butterfly. The results were gruesome – the tiger was hit repeatedly by the JCB, and crushed to death, all part of its 'rescue'. In a video made documenting this, one can clearly hear a group of people around the animal, with a voice shouting "*dabao, dabao*" (press it down).

Human-human conflict

The Corbett story is telling. When going into an area inhabited by an obligate carnivore like a tiger, very few precautions are taken. Most labour camps are not provided with protocol, proper toilets, or monitoring to avoid work in the early morning or late night, and to move about only in groups.

Many cases of conflict or aggression towards animals are exacerbated by carelessness and existing human-human conflict or tensions. The question is also linked to control and which groups or classes are interested in being dominant. In 2012, when a tiger was spotted near Lucknow, members and volunteers of the Samajwadi Party declared they would catch it. This was framed as 'public interest'. Needless to add, one needs training, not bravado, to catch a wild tiger.

The discourse around a wild animal, especially as it comes closer to people or human habitation, is that it is a criminal, a rogue, a stray, or a killer. There is, however, very little reflection on the role of people in inciting a wild animal.

We need proper cordoning off of areas when wildlife comes close to people, with animal capture being done with full police involvement and not just with a helpless forest department. We need investigations and action against groups that deliberately incite a panicked wild animal. To not do so would be to allow future situations to become even more dangerous; and to privilege revenge over solutions.

A general mob mentality is on the rise in India. Mobs are involved in attacks related to race, food preferences, and various forms of moral policing. In the face of such 'mobocracy', does wildlife stand a chance?

Neha Sinha is with the Bombay Natural History Society. Views expressed are personal

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.

Army's human shield

The Indian Army is known for its discipline and high degree of professionalism. Its mandate is to protect fellow citizens and not to humiliate them. Having force at your disposal is not an excuse to misuse it. The incident, of the Army allegedly using a human shield, will not deter stone pelters in Kashmir but will only increase their hatred towards the Army in particular and the government in general. For the aggrieved populace, every step of the Army will now be presumed to be an act by the state. The Army and the administration must apologise and mend their ways. The solution to the Kashmir problem lies in developing trust with all sections of society, and not through the mindless application of force (Editorial – "The rights thing", April 17).

DIVYANK SINGH,
Bhopal

■ Such acts, which must be condemned, are bound to further alienate Kashmiris. It is common knowledge that the sweeping powers given to the Army to counter insurgency are being widely misused. The situation in the Kashmir Valley is extremely volatile and our defence forces must exercise restraint, despite provocations. It is the responsibility of everyone to bring down the temperature in the troubled Valley.

VIJAI PANT,
Hempur, Uttarakhand

■ The names of several terrorist organisations which have used human shields in combat situations have been cited. But how could the very relevant example of stone pelters and militants in the Kashmir Valley themselves using innocent children and women as human shields have been missed? The media and other observers should stop applying the human rights yardstick selectively.

PRADEEP KOTHARI,
Rajgarh, Churu, Rajasthan

■ There seems to be hasty judgment of the actual ground situation prevalent at the time of incident. There has been no objective report on the use of "hybrid" methods being used by terrorists and misguided youth in Kashmir which include the use of minors as human shields. How can the lofty principles of the Geneva Convention on human rights be applied to these totally unconventional proponents of violence, hatred, separatism and mindless destruction? It would be refreshing if this daily, with its tremendous appeal, goodwill and sense of perceived fairness across the country, makes a similar impassioned plea to the youth of Kashmir to eschew their path of self-destruction.

SRIKANTI SUBRAHMANYAM,
Hyderabad

Case of Justice Karnan

The shocking behaviour of Calcutta High Court judge Justice C.S. Karnan in summoning judges of the Supreme Court judges to his 'residential court' for a hearing is unbecoming of the high office he holds (Editorial – "Outrageous defiance", April 17). Next to our defence personnel, members of the judiciary are seen as role models by the people for their discipline and dignified demeanour and fairness in action. However, we are witnessing a gradual decline. Justice Karnan's grouse, that he is being victimised on the basis of his caste, is an idle excuse. If this was the case, he would not have risen to the present position.

Y.G. CHOUKSEY,
Pune

■ As a law-abiding citizen, I am baffled and appalled by what is happening in Justice Karnan's case. I want to ask the honourable judges of the Supreme Court this: why are you treating Justice Karnan with kid gloves even after all the outrageous statements he has made in the media? I cannot imagine the common man not landing up in jail for saying half the things that Justice Karnan has said. Contempt of court is a necessary tool at the disposal of courts but it should be applied in a fair manner to all citizens.

ADITYA SHIKHAR,
Lucknow

■ The editorial was extremely biased. The substantive question raised by the honourable judge has been about corruption at high levels within the judiciary which has possibly been witnessed by the judge at close quarters. Many appear to be diverting from the issue. There is no mention of the need to address the issue of corruption. The honourable judge knows that the law is the final authority. He needs to be given a hearing.

T. MALLAN,
Mumbai

Justice denied

While every country has the right to deal with anyone indulging in anti-state acts, it has been clear *ab initio* that the so-called due process of law, if any, followed by Pakistan in the sentencing of Kulbhushan Jadhav is farcical. The speed with which the trial was carried out, and the manner in which India has been denied consular access to Mr. Jadhav indicate that something is seriously amiss in the events leading to his sentencing for alleged subversive activities. The warning by the Lahore High Court Bar Association that it would act against any lawyer who extended services to Mr. Jadhav is a black mark on the legal profession anywhere in the world. The Bar Association and the Pakistan government should be reminded of the fair trial given to Mohammed Ajmal Kasab, the gunman who took part in the 2008 Mumbai terror attacks despite his undeniable involvement and objections from sections of advocates in India.

B. HARISH,
Mangaluru

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The great climate churn

Regional and global planning is essential to combat extreme events

SUJATHA BYRAVAN

On thin ice: "If all the ice over the Antarctic were to melt, sea levels would rise by about 60 metres." Tourists in the Antarctic peninsula in 2010. ▪ AFP

In recent months, unprecedented rates of glacier melts have been reported both in the Antarctic and the Arctic. "A massive crack in Antarctica's fourth-biggest ice shelf has surged forward by at least 10 kilometres since early January," said *Nature* magazine in a recent article. Glaciers cover the terrain in both these regions, which have the only permanent ice sheets that still exist on earth today.

The earth has enjoyed a more or less stable temperature for the last 10,000 years. Prior to that there were several ice ages and periods of warmer temperature, also known as inter-glacials. The ice ages are believed to have been caused by small shifts in the earth's orbit, but all the reasons for the temperature fluctuations observed are not yet entirely understood.

About 5.3 to 2.6 million years ago, during the Pliocene epoch, global sea levels were close to 30 metres higher than they are today, while average global temperatures were only about three to four degrees Celsius warmer. What could happen in the current century, as a result of anthropogenic climatic change, remains a matter of great interest within the scientific and policymaking community.

The melting Antarctic

The Antarctic ice sheet is 14 million sq km in area and holds a large amount of frozen fresh water. (In comparison, the area of India's land mass is about 1.3 million sq km.) If all the ice over the Antarctic were to melt, sea levels would rise by about 60 metres. Parts of the ice sheet also flow into the ocean and do so through ice shelves that protrude into the water. Several media reports over the last few months have covered the expanding rift or crack along the Larsen C shelf in the Antarctic, which is expected to break off at any time. Larsen A and B collapsed in 1995 and 2002 respectively. Normally, ice shelves lose mass by the breaking off, or calving, of some of the portions and also by melting.

When such large chunks break away from an ice shelf, they speed up the collapse of the entire shelf. Since this is attached to the rest of the glacier, these processes can increase the speed at which the glacier flows into the ocean. Thus, even though the Larsen C collapse by itself, since it is in the water, will not raise sea levels, it will hasten the melting of the glacier it is connected to.

In 2014, Eric Rignot, principal scientist for the Radar Science and Engineering Section at NASA's Jet Propulsion Laboratory, wrote that the retreat of ice in the Amundsen Sea sector of West Antarctica is inevitable, with major consequences for global sea levels. While the entire West Antarctic Ice Sheet (WAIS) may take a few hundred to a thousand years to completely melt, the process and the resultant collapse are now recognised as unstoppable.

Rising sea levels

In the Arctic, if all the ice in the Greenland ice sheet were to melt, it would raise global sea levels by about 7 metres (or 23 feet). For the last several years, glaciologists have noticed that ice melt in the summer has increased and covers a larger area than previous years. Scientists now realise that a lot of the recent melt has been due to increasing surface melt, in addition to calving or breaking off of chunks of ice.

Experts have known that there are feedback mechanisms that speed up glacier melt; exactly what these processes are and the rate by which they accelerate the melting remains an area of research. Soot and dust carried by air from various places, bacteria and algal pigments in the meltwater, any other pigments in the glacier can all reduce the reflection of the sunlight, thus increasing the absorption of heat energy by the ice. This consequently increases ice melt, which then absorbs more solar radiation, thus accelerating a feedback process. The meltwater flows into deep shafts, or moulins, that then speed up the flow of the glacier.

But there are also other phenomena that seem to have an influence on glacier melt. Temperatures in Northern Greenland have been much warmer and in fact, surface melt has doubled Greenland's contribution to sea level rise over the period 1992-2011 to 0.74 mm per year. Carbon dioxide concentrations have crossed 400 ppm in the atmosphere and are the highest they have been in the past 4,00,000 years.

Modelling glacier melt is very complex as it is affected by the temperature of the water, ocean currents and other factors still not entirely understood, along with various positive feedback mechanisms that can speed up the melting. The well-known climatologist James Hansen and his colleagues published a paper last year suggesting that sea level rise is a non-linear process and given what happened to sea levels in past geological periods, we should prepare for a rise of several metres over the next 50-150 years. This would imply that many of those alive today would likely see substantial increases in their lifetimes.

Global response needed

The global community is well aware that many large and densely populated cities are located along the coast and in low-lying deltas. Protecting the coast is an expensive undertaking and even then dikes, sea walls and similar structures provide only partial protection, based on studies undertaken by the Dutch Delta Committee and others. For India, the east coast, especially certain low-lying districts, are extremely vulnerable to intensive storms, which then lead to flooding, salt-water intrusion, and loss of land and livelihoods. On the west coast, while there are generally fewer storms, the concern is coastal erosion and flooding from sea level rise. The discussion regarding sea level rise and potential coastal impacts needs also to be understood not just as a coastal phenomenon, but also as an issue that ripples through the entire economy. Flooding in Chennai two years back did not affect just the land, but went through the economy as a whole and Swiss Re, the reinsurance company, has estimated losses to the economy due to the floods to be $2.2 billion.

Thus, enforcing the coastal regulation zone, protecting vulnerable districts and the most vulnerable communities which rely on ecosystems and the sea for their livelihoods are areas that need strengthening. Regional agreements related to refugees from climate effects need to be initiated. As a country which has generally been open to refugees from Tibet, Nepal, Afghanistan, Bangladesh and Sri Lanka, initiating and taking forward the conversation on regional planning for extreme events such as sea level rise would be important for India, the largest country in the region.

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Redefining citizenship

The absence of a constitutional right to vote has consequences

CHINTAN CHANDRACHUD

In March, the Supreme Court requested the government's views on a PIL seeking to impose a lifetime ban on contesting elections for those sentenced to imprisonment for more than two years. Currently, the ban extends to six years after the completion of a sentence. The proposed change, which is supported by the Election Commission, would effectively end the electoral career of many prominent political leaders.

This case could be the latest amongst a series of Supreme Court decisions modifying the electoral process in recent years: the court has held that citizens are entitled to cast a 'none of the above' vote, that prisoners are disqualified from standing for election during periods of incarceration, that the concealment of criminal antecedents constitutes a corrupt practice under the law, and that electoral appeals to caste and religion are impermissible.

Around the turn of the century, the court increasingly began making decisions addressing the 'criminalisation of politics'. Early decisions focussed on disclosure and transparent process – ensuring, for instance, that candidates declared assets and liabilities, educational qualifications, and criminal antecedents. Yet, it was left to the wisdom of the electorate to decide whom to vote for. Similarly, parties were tasked with determining whether it would be appropriate to field candidates with criminal antecedents.

Disquieting developments

More recently, however, the court has gone further; it has attempted to gradually reshape the ballot. At first glance, these come across as welcome developments – after all, who could fault the court for preventing prisoners or those with criminal records from contesting elections? Yet, they raise fundamental questions about the nature of our democracy, and are deeply disquieting for a number of reasons.

First, the court has increasingly used the regrettable, caste-based taxonomy of 'purity' and 'pollution' in its decisions. For example, in 2013, it endorsed the decision of the Patna High Court observing that candidates with criminal records pollute the electoral process, affect the sanctity of elections and taint democracy. The court's language is symptomatic of its conception of its own role – as a sentinel of democracy seeking to 'disinfect' the electoral process. This is more than a poor choice of words. The court has the power to frame debate and influence the language of argument in ways that perhaps no other institution does.

Second, the court's recent decisions have meant that whether the right to vote is a constitutional right or merely a statutory privilege is still a matter of contestation. Article 326 of the Constitution provides for universal adult suffrage, but does not specifically mention the right to vote. Rights that are not explicitly set out in the Constitution, such as the right to privacy, have routinely been impliedly read into the text. But the court has refused to categorically recognise the right to vote as an inalienable constitutional right, frequently holding that it is a privilege that can be taken away as easily as it is granted.

It is disconcerting that the court still does not clearly acknowledge a constitutional right to vote. Participation in the electoral process is often seen as a gateway right, or a 'right of rights'. Our only response to citizens whose candidate of choice has not been elected is to point towards their right to exercise that choice in the first place. The absence of a constitutional right to vote has real consequences, for it makes it easier to impose wide restrictions on who can exercise that right, and the circumstances in which they may do so.

AFP

Closely tied to this refusal to clearly recognise a constitutional right to vote is the court's endorsement of the embargo on the voting rights of prisoners. Blanket prohibitions on voting are the surest way of alienating a political community. The embargo is particularly draconian, for all prisoners, regardless of the seriousness of their offences or the length of their sentences, are denied the vote. Moreover, prisoners awaiting trial are also denied this 'privilege'.

It is one thing for the court to introduce transparency-promoting measures with a view to allowing change to take place organically, but quite another to change the rules of the game to match its conception of the ideal electoral system. The right to vote and the right to contest elections are fundamental markers of citizenship in a constitutional democracy. Incrementally yet decisively, the court is changing what it means to be a citizen of this country. It may soon take another step in that perilous direction.

Chintan Chandrachud is an Associate at Quinn Emanuel Urquhart & Sullivan LLP, London.

SINGLE FILE

A lingering threat

There is fear that whatever remains of chemical stockpile may possibly have fallen into the hands of extremists

GARIMELLA SUBRAMANIAM

▪ AFP

If confirmed by the Organisation for the Prohibition of Chemical Weapons (OPCW), the April 4 chemical attack in Syria, where more than 80 people suffocated to death, would mark a tragic coincidence of the 20-year commemoration of the ban on chemical arms. While the incident is still under investigation by the OPCW, the bodies of victims are believed to bear signs of the effects of exposure to sarin gas, similar to the 2013 Ghouta attack.

When Syria confessed in 2012 to its chemical munitions stockpiles, assuring the world that it would not deploy them against non-combatants, it merely confirmed widely held suspicions. But the death of hundreds in Ghouta undermined then U.S. President Barack Obama's redline on Syria's use of chemical weapons. Under a subsequent deal that Moscow brokered with western nations, Washington, weary from the quagmire in Iraq, held back from punitive military action.

The horror in Ghouta came to be described as Syria's Halabja, a reference to the 1988 massacre of 5,000 Kurds in the Iraqi town. The global outrage against the 2013 incident forced Syrian President Bashar al-Assad to accede to the 1997 treaty.

The removal of the final consignment of chemicals in June 2014 to different destruction destinations marked a milestone in the OPCW's Syria operations. But questions have remained over the stockpiles and production facilities that Damascus has declared to international monitors. Within a year of the removal came the chlorine barrel bombing on Sarmin, in March 2015, killing six people. There have been similar instances before the horror that shook Khan Sheikhoun earlier this month.

Veil of U.S. secrecy

But there is a dark chapter in an otherwise promising history of disarmament of this class of weapons, one that dates back to Iraq's brutal war with Iran in the 1980s. In 2014 appeared a disturbing revelation of the Pentagon's denials and delays in acknowledging the grievous exposure of hundreds of U.S. soldiers to weaponised chemicals in Iraq between 2004 and 2009. The OPCW confirmed that the thousands of weapons and agents that the U.S. detonated, dangerously under open skies, were all from the earlier conflict. It is only after Baghdad's 2009 accession to the Chemical Weapons Convention, which obligated further demilitarisation under the OPCW's watch, that the full extent of these activities came to light. But the earlier veil of U.S. secrecy has still left lingering fears that whatever remains of these deadly munitions found in the now largely Islamic State-held region may possibly have fallen into the hands of extremists.

As of October 2016, 90% of the world's declared stockpile of chemical agents has been verifiably destroyed or converted to peaceful purposes, according to the OPCW, and around 98% of the world is free from exposure to chemical arms. While the legal ban that has been in place for two decades is a significant advance, it is hard to draw comfort from numbers, especially when the munitions are weapons of mass destruction.

CONCEPTUAL

Glocalisation

SOCIOLOGY

Sociologist Roland Robertson suggested replacing what he considered a widely misunderstood term, globalisation, with glocalisation, in order to transcend the tendency to cast globalisation in opposition to localisation. In a paper in the 1980s, Robertson argued that globalisation is seen as the triumph of culturally homogenising forces above all others; as overriding locality. Interactions between different cultures do not amount to homogenising, he said, for the global can never exclude the local. The origin of glocalisation, however, can be traced to Japan, to the word *Dochakuka*, which is the principle of adapting farming techniques to local conditions.

MORE ON THE WEB

Is Snapchat really not meant for "the poor"?
http://bit.ly/poorsnapchat

ABSTRACT

Challenges to party democracy

The alternatives populism and technocracy offer

SRINIVASAN RAMANI

In the 21st century, among countries where there is electoral democracy, the dominant form is representative democracy. Daniele Caramani's paper, published in the *American Political Science Review,* titled 'Will vs. Reason, the populist and technocratic forms of political representation and their critique to party government', explores the challenges to representative democracy – defined as party democracy – from populism and technocracy.

The paper explores representative democracy beyond the ideal expectations from a party democracy and classifies the ideal forms of populism and technocracy, the differences between the two forms (and their distinctions from party democracy), and their inter-related similarities. Considering that populism has increasingly been on the rise in mature democracies, it is necessary to understand its conceptual bases, while looking at its purported counterpart, technocracy.

Caramani defines party-based representative mechanisms as one where parties fulfil the function of linking citizens and representatives by articulating their interests and of governing responsibly by putting forth political personnel. The populist critique is that this ideal form of party representation has been weakened by the reduction of party as being representatives of the state rather than of the people, while the technocratic critique is that parties, by constantly seeking legitimacy, focus more on elections rather than governance.

In contrast, populism and technocracy are anti-politics and anti-party specifically. Populism reduces representation as the leadership's identification with the people as 'one of (all of) them', while technocracy places rule by a group of experts who are authorised to decide on the people's behalf. Both types have a non-pluralistic view of society and seek to unitarily represent society to pursue an external common good as opposed to party representation's subjective aggregated good, and are anti-ideological. Populism's legitimacy is based on the 'will of the people'; technocracy on 'rational speculation'. But plurality is reductive for both: for the former, it is the opposition between the people and the elite; for the latter, it is between 'right' and 'wrong'. The author suggests that populism and technocracy can be constructed as theoretical ideals and thus exist as a challenge to party democracy. But the latter's resilience in places where parties are mature will lead to its adapting itself to populism and technocracy by incorporating features from both.

FROM The Hindu. ARCHIVES

FIFTY YEARS AGO APRIL 18, 1967

Reassessment of Viet Nam war

President Johnson yesterday [April 16, New York] re-examined every aspect of the Viet Nam war, aided by secret reports on military progress and the anti-war movement at home. The reassessment came in the wake of the biggest peace demonstration ever to take place in the United States. The elated organisers claimed more than 300,000 people marched shouted slogans, sang folk songs and heard speeches in New York and San Francisco yesterday, although police estimates put the figure at nearer 200,000. Apart from a handful of arrests and a few skirmishes between the "hawks" and the "doves," the marches were a model of discipline with massive police protection from small groups of counter-demonstrators.

A HUNDRED YEARS AGO APRIL 18, 1917

Wonderful strength from phosphate

A great authority on the subject of health, strength, and endurance, in explaining the remarkable strength and endurance obtained from the use of the product known among chemists as ditro-phosphate, claims it is entirely due to its wonderful nerve-building properties. He says, and it must be admitted, that his logic is unanswerable, that, inasmuch as the muscles simply transmit power derived from the nervous system, strong nerves and a big reserve of nervous energy are infinitely more important than big muscles. Ditro-phosphate, not being a drug or a stimulant, but a food which supplies direct to the brain and nerves the required phosphoric elements, was first prescribed by physicians with astonishing success in the treatment of neurasthenia, insomnia, nervousness, debility, and mental depression. It was soon noticed, however, that in addition to permanently relieving nervous disorders, it also marvellously increased strength and endurance.

DATA POINT

Surfing against the tide

While Indians reflect global trends in the choice of desktop browsers, they differ in their preference among mobile browsers

BROWSER MARKET SHARE IN INDIA (DESKTOP) FIGURES IN %

Browser	2009	2012	2015	2017	2017 (global)
Chrome	**7.74**	**42.37**	**66.83**	**73.41**	**62.61**
Firefox	31.23	33.57	22.23	17.94	14.88
IE	56.56	19.29	7.39	3.28	9.82

BROWSER MARKET SHARE IN INDIA (MOBILE PHONES)

Browser	2009	2012	2015	2017	2017 (global)
UC Browser	**0**	**20.72**	**48.81**	**52.98**	**16.72**
Chrome	0	0.04	12.38	27.87	46.27
Opera	61.43	34.96	20.9	10	5.91

SOURCE: STATCOUNTER.COM