

**The Indian EXPRESS**

FOUNDED BY

RAMNATH GOENKA

BECAUSE THE TRUTH INVOLVES US ALL

# May the silent be damned

Evil is wearing down protest. The new wave of lynchings represents a new benchmark in Indian politics



PRATAP BHANU MEHTA

JUNAID KHAN, MOHAMMAD Akhlaq, Pehlu Khan, Zahid Rasool Bhat, Abu Hanifa, Riazuddin Ali, Zafar Hussain, Ayub Pandit. The list can go on, will tragically go on, in a republic whose only near certain headline these days is a lynching. The protests will come, hesitant and muted. But even the tag line of the protest, "Not In My Name", will, unconsciously, betray a sense of numb helplessness. All we can do is distance ourselves, deny our culpability. But whether we can prevent this atrocity from being repeated is another matter. A monstrous new moral order is unfolding, irrigated by the blood of our citizens. But this monstrosity is also wickedly clever. It is unfolding slowly, picking on individual victims, manifesting through a thousand cuts, rather than through a big cataclysm.

A big riot would concentrate the mind, make a damning headline. A protracted riot in slow motion, individual victims across different states, simply makes this appear another daily routine. This makes opposing it harder; it makes holding onto the outrage nearly impossible. We can keep repeating our outrage till our words are exhausted; each expression of outrage loses its power simply by being made to be repeated over and over. What began as a loud voice over Akhlaq is now a fading echo over Junaid. It is evil telling language: "I am more inexhaustible than you." Every repetition of condemnation seems to diminish its power. After Dadri, the critics are made to sound like broken records, each protest less effective than another. Meanwhile, every act of violence emboldens another.

But if evil is already patiently wearing down protest, there is a deeper reason why this kind of violence represents a new benchmark in Indian politics. There are, of course, the usual defence mechanisms to deny the gravity of this violence. It is an irony that in an age defined by hype, the only hype that is condemned is one that tries to bring this violence to the centre of our attention. Pointing out that violence has happened before, in other political regimes, that it is an endemic part of the way vulnerable groups, Dalits, Adivasis, increasingly minorities, are put in their place is also no longer an enabling

moral insight. Instead of using this history to behave us to take this violence seriously, we use it simply as a way of deflecting attention.

The sins of the past become the perfect excuse for destroying the moral community of the future. The third mechanism is to quarter justice into partisan hues till it disappears from sight. Since X did not condemn violence against Y, their protest on violence against Z must be in bad faith. This argument itself now has become a weapon of psychic warfare to disable any confronting of violence. It is often not even a true description of people's position, but more a tool to shut them down. Indeed, it is a strange corrosion of the moral order which is focussed on condemnation of each and every act of evil individually; no citizen can possibly deal with every single act of evil in this country. It deflects attention from the underlying institutions and moral principles at work.

These lynchings are fiendishly redefining citizenship. The significance of this violence is not just the number: Whether it is 15 incidents or 50. It is to spread the fear that it can happen at any moment, anywhere. This violence establishes a new political dispensation, where a group of people claim direct sovereignty: They act above formal law and order institutions, they feel entitled to enforce the morality, and their impunity comes from the fact that they can now stand in for the "authentic people." Although the violence is different in many respects, there is this commonality in those who lynch in the name of cows and those lynching in the name of azadi in Kashmir. Since I speak in the name of the authentic Hindu or the authentic Kashmiri, my violence now has this imprimatur of what I take to be a people's sovereignty.

The formal institutions of the state will not condemn this violence, or condemn it in half-hearted abstractions, because they have unleashed this politics. When the nation can speak unmediated, if a single leader, or a news anchor can be a stand-in for the nation, each violent citizen will also be emboldened to take on the same role. When the nation is the highest unmediated value, is it any surprise that anything being done in its name becomes higher than law? When every po-

litical leader, most television stations, daily peddle the poisonous binary of authentic and non-authentic Indians, is it any surprise that the gau rakshaks, through their act of violence, declare themselves to be defenders of the authentic Indian, as they see it?

Let us make no mistake about this. There will be a lot of mendacious evasions. It will be said that this violence is not over beef. It has to do with some other disputes. Lynchings and vigilante violence have happened before, even under Congress rule. Violence happens across political regimes. But its placement in a normative order also matters. These obvious facts cannot take away one large feature of the current wave. What makes this violence chilling is not what's in the statistic. It is that it is acquiring an atmosphere of a religious communion about it. It is violence to establish the power of the majority, and to redefine that majority as a political dispensation sees fit. This violence is now united by one single thread, of showing minorities their place. All of us are innocent till proven guilty; minorities, whether on a train, driving a truck, transporting cattle, distributing sweets, are guilty until proven innocent. This violence seeks to alter the fundamental moral and constitutional order: The victim of the lynching is presented as the criminal, while the ideologies that justify this killing enjoy the patronage of the state. This is what makes it induce so much fear. A fear exacerbated by the fact that our public conscience seems to have been all but dismantled.

The metaphysical invocation of India's diversity, or the examples of personal virtue here and there, should not blind us to the core ideological, institutional and human rights problem this new wave of lynching represents. Narendra Modi may loudly proclaim that he is defending our borders. But his cowardly silences, or abstract gestures, are emboldening the barbarians within. What political dispensation will be able to prevent this list from Akhlaq to Ayub from growing is an open question. But at least we should say, "May the silent be damned."

The writer is president, CPR Delhi and contributing editor, *The Indian Express*

## JUNAID'S MURDER

The BJP calculates that it does not need his vote. Is that why the lynch mob will get away again?

MOHAMMAD AKHLAQ WAS lynched in Delhi's backyard in Dadri, on suspicion of storing beef in September 2015. Zahid Rasool Bhat, 16 years old, a student of Class 10, the first member of his family to go to high school, succumbed to injuries sustained during a petrol bomb attack on the truck he was riding in Udhampur, by a mob that suspected him of transporting cattle/beef in October the same year. In the latest instance, 15-year-old Junaid Khan was stabbed to death on board a Delhi-Mathura train last week as he headed home to Ballabgarh after Eid shopping, by a group of men who hurled religious slurs at him. In all these incidents, was the state, the government, to blame? Of course not, it is possible to say. In these, as in the lynchings that happened in between, it was the anonymous mob that, almost suddenly, set upon the vulnerable aam Muslim and killed him, on the pretext of cow protection, as punishment for presumed eating habits, or for wearing the symbols of a different religious identity. These bloodthirsty mobs have formed at different times, in different states — in Rajasthan, Jharkhand, Haryana, UP, Madhya Pradesh, Assam, J&K. But equally, it must be said: The quietude of the BJP-ruled governments in the states and of the Narendra Modi-led Centre — in stark contrast to their regular drum-beating on definitions and tests of nationalism/Indian-ness — and the heavy-footedness of the law enforcement machinery in the aftermath, implicates them in every such attack. It makes the next one possible. The randomness of the violence, its apparent banality, makes it more difficult to prevent and to address. But the state has no option not to do so. Else, the conclusion is inescapable: The lynching is carried out by the mob, but the mob is emboldened by the state.

Yet there is a question: Why must the ruling party take on the grim responsibility, when there is no evidence of it paying any electoral penalties for the lynchings? After all, over the last three years, even as the lynchings continue, the BJP has been on a winning spree. It posted a famous victory in Mohammad Akhlaq's UP earlier this year. It may even be that Junaid's killing on the train to Ballabgarh last week will account for little or no dent in the Khattar government's prospects in the next election.

But there is another question here that the BJP must ask itself, about the nature of its constitutional pact with the people, including and especially the minority community: Does the fact that it does not need Muslim votes to win mean that it can abandon the community to the crazed mobs? Can its allegiance and commitment to democracy be so impoverished, as brutish a notion as that? The party that dominates the Centre and rules a growing number of states in India must ask itself if, despite its several electoral successes, it can call itself a victor if the very polity it presides over is hollowed of its richness, if it can no longer boast of being a safe house for minorities.

## STIFLED BY THE HOUSE

Sentencing of two Bengaluru editors should spur the judiciary to prevent the misuse of privilege law

INVOKING BREACH OF privilege, the Karnataka Assembly has announced jail sentences for the editors of two Bengaluru tabloids. Perhaps the Speaker, K.B. Koliwad, misunderstands the purpose of the law of privilege, which is to protect the independence of the House. Privilege is to be invoked only if an intervention prevents members of the House from discharging their duties. Typically, this amounts to preventing legislators from speaking their mind. No such thing happened in this case, and the legislators who felt impugned by the tabloids could have taken recourse to the laws of defamation and libel, without dragging the issue into the House.

The action is objectionable on other counts. First, it marks an unfortunate departure from the doctrine of separation of powers and functions, on which the entire edifice of Indian democracy stands. The Speaker is complainant, advocate and judge, and has even fixed the quantum of punishment — a year behind bars and Rs 10,000 in fines. Which brings us to another objection against the move: There is very little clarity about the law of privilege, and whether it is proper for legislatures to award punishments remains debatable. This case should serve as a spur to bring clarity to the provision of privilege. Situations which attract it should be narrowly and unambiguously defined, and legislatures should not have the right to impose punishments unilaterally, only because some of their members feel impugned.

The misuse of privilege appears especially disturbing at this juncture, when the press is perceived to be under attack. Last winter, the closure of *Kashmir Reader* for almost three months, on the charge that its coverage of street protests following the killing of Burhan Wani of the Hizbul Mujahadeen could incite "acts of violence and disturbance of public tranquillity", was entirely avoidable. The gratuitous misuse of legislative privilege in Karnataka is most unfortunate. The judiciary should immediately clarify the applicability of privilege, and ensure that legislatures can no longer play plaintiff, advocate and judge, all rolled into one.

## A NEW CHAMPION

Srikanth's success mirrors the coming of age of his sport. India can no longer afford to play down badminton

SOME MISTOOK JUNE 18 for a sporting Super Sunday. The cricketers unexpectedly lost to Pakistan, the hockey team predictably drubbed a very poor neighbour's team and Srikanth kept his end of the bargain beating a Japanese for the Indonesian Open Premier Super Series title. A week later, the shuttler ramped it up further for a second title against a bigger opponent but that Super Sunday had collapsed into a sulking weekend, with hockey going to Malaysia and Canada and cricket bickering over the national coach.

That's sport. But it doesn't behave a mature nation to churlishly see one sporting victory from the prism of another team's defeat. Badminton's consistent headlines on a score of Sundays for close to seven years now deserve to be deemed as its emergence as a successful sport with its own script, rather than peeking out of the shadows of cricket and its money. Srikanth's is an individual's and system's success story which needs neither the rabid resentment against cricket to prop it up, nor a comparison with P.V. Sindhu and Saina Nehwal. Both girls as well as the male singles players — Kashyap, Ajay Jayram, Srikanth, Sai Praneeth, Sameer Verma and H.S. Prannoy, or doubles stars Jwala Gutta, V. Diju and Ashwini Ponappa — worked hard and earned their fame and funding.

Srikanth's success — four Super Series titles now — also spells out the formula of sporting success: Giving athletes "facilities" doesn't mean blanket splurging on stadiums, and import of equipment and coaches. It needs precise planning, innovation and expertise of former players. Many sports have received greater funding in India but not shown the consistency of badminton's results. As for the 24-year-old, it's time to shrug off amateurish complaints of a nation that is a sleeping giant which refuses to wake up owing to lack of infrastructure. Srikanth woke up each day at 4 am — as did his coach Gopichand — and trained hard to get here. Now the country can stop the cribbing and learn to tell apart rival Viktor Axelsen's backhand net pushes from Chen Long's forehand dribbles.

## MR PATI, MY TEACHER

Biswamoy Pati taught his students to love history, and live it



KAUSHIK DAS GUPTA

"I AM BOMBARDING you with ideas," he would say almost as a matter of habit. It wasn't just another mannerism. To a student for whom history was a record of the deeds of kings, great men — very few women — perhaps an insight into the exotica in museums, Biswamoy Pati, who passed away on June 24, was a teacher who opened new ways of understanding the past. I was his student at Delhi University's Sri Venkateswara College in the early 1990s.

Those were interesting times — the V.P. Singh government had decided to implement the Mandal Commission Report, the Ramjanmabhoomi-Babri Masjid dispute was stoking animosities and the seeds of a decisive shift in the country's political discourse were being sown. Mr Pati, as many of us would call him, was disturbed that some of his students — me included — were taking part in the anti-Mandal agitation. That wasn't the usual teacher's disapproval of students missing classes. Pati was bothered that his students had taken to the streets for the wrong cause.

I could not see his point then. His arguments against caste discrimination were well-taken. But why not address discrimination by providing employment to all? It was not that simple, my teacher reasoned. He usually had an animated manner of speaking that every now and then would be broken by an impish smile that could disarm even

the most trenchant interlocutor. But his passion for what he believed was right became even more palpable during arguments such as the ones over the Mandal protests. In classrooms, outside it, over *chai* in the college canteen, many of us learnt that rights are not just about providing employment. Those were my first lessons in the axiom often used by historians: "The past lives in the present".

"Historians should avoid the word, inevitable," he once commented on a term paper I had written. A seemingly inscrutable remark such as this was amongst Pati's ways of challenging his students out of their comfort zones. Besides great men, history was peopled with peasants, tribal people, ordinary men and women; it was about social processes, landscapes and institutions — the caste system for example. The classroom, the small history department room and the canteen often became seamless; and the boundaries of the syllabus were breached. At such times, he would caution: "Don't write all that we discussed in your examination answer sheet."

I never used the word "inevitable", in an answer sheet again. Pati's comment stayed with me even though it took me years to fathom that he was actually cautioning against lazy history writing. It's the task of historians to unravel social processes in the past and the ways in which human beings shaped the times they lived in. The word "in-

evitable" militates against this labour of love. Pati's remark was a teacher's way of pushing an undergraduate student towards the "historian's craft".

All my undergraduate years, I knew Pati as the quintessential teacher. Much later, I became acquainted with his formidable oeuvre that traversed the history of peasants, tribal people, the 1857 rebellion, medical history. He was awarded fellowships by prestigious institutions in the country, and different parts of the world. But he hardly ever talked about his own research in class. As a teacher, Pati was a mediator between the discipline and the student. His "bombardment" of ideas made many of us fall in love with history.

Pati did not just share his love for history, he also drew many of us into his passion for a more humane society — in his case, the two were perhaps inextricable. His affability sometimes showed up in unexpected ways. He once stopped in the middle of a lecture on the Boxer Rebellion in China to scold me for wearing what he described as a "thin pullover on a biting cold winter day". "Asthmatics like you should avoid such bravado," he said.

Mr Pati, these are times when the plurality of ideas is besieged. We needed you to keep bombarding the world with ideas. This was not the time for you to have departed, Sir.

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## JUNE 27, 1977, FORTY YEARS AGO

### PRESIDENT CANDIDATE

THE CONGRESS IS likely to extend its support to the Janata Party if an appropriate candidate with national stature is chosen. The Congress approach to the presidential election has been conveyed to Prime Minister Morarji Desai. If Lok Sabha Speaker Neelam Sanjiva Reddy or any other person having a similar standing in public life in the country is put up by the Janata Party, the Congress may support his or her candidature for the top constitutional post. Many opposition groups, including the CPM, seem to prefer Reddy. The Janata is in a position to get its nominee elected with the support of the Akali Dal and the CPM.

### TAX REFORMS PANEL

THE GOVERNMENT ANNOUNCED the constitution of a committee of experts, with N.A. Palkhiwala as chairman, to examine and suggest legal and administrative measures for simplification and rationalisation of the direct tax laws and such further alterations "as are desirable in the interest of the national economy". The committee will recommend measures relating to income tax, wealth tax, gift tax and estate duty and to alter those laws with a view to making them readily comprehensible to tax-payers, reducing litigation and thus serving the interest of the national economy; suggest ways and means of improving the administration of those laws and

expediting assessment, appellate and other proceedings under those laws; examine the advisability of consolidating the laws relating to income tax, surtax, wealth tax and gift tax into one law. The committee is to submit its report to the government by December 31.

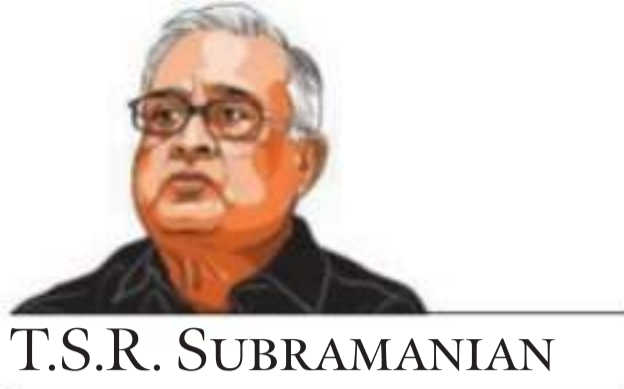
### NIGHT MAIL SERVICE

THE NIGHT AIR Mail Service, with its centre in Nagpur, is likely to be resumed within the next three months. The service was discontinued in 1974. Under it, aircraft from Delhi, Bombay, Madras and Calcutta would converge at Nagpur around midnight and fly back to their respective metropolitan centres after exchange of mails there.



# Not for the children

Our educational system seems tailored for its administrators. Students, teachers take second place



T.S.R. SUBRAMANIAN

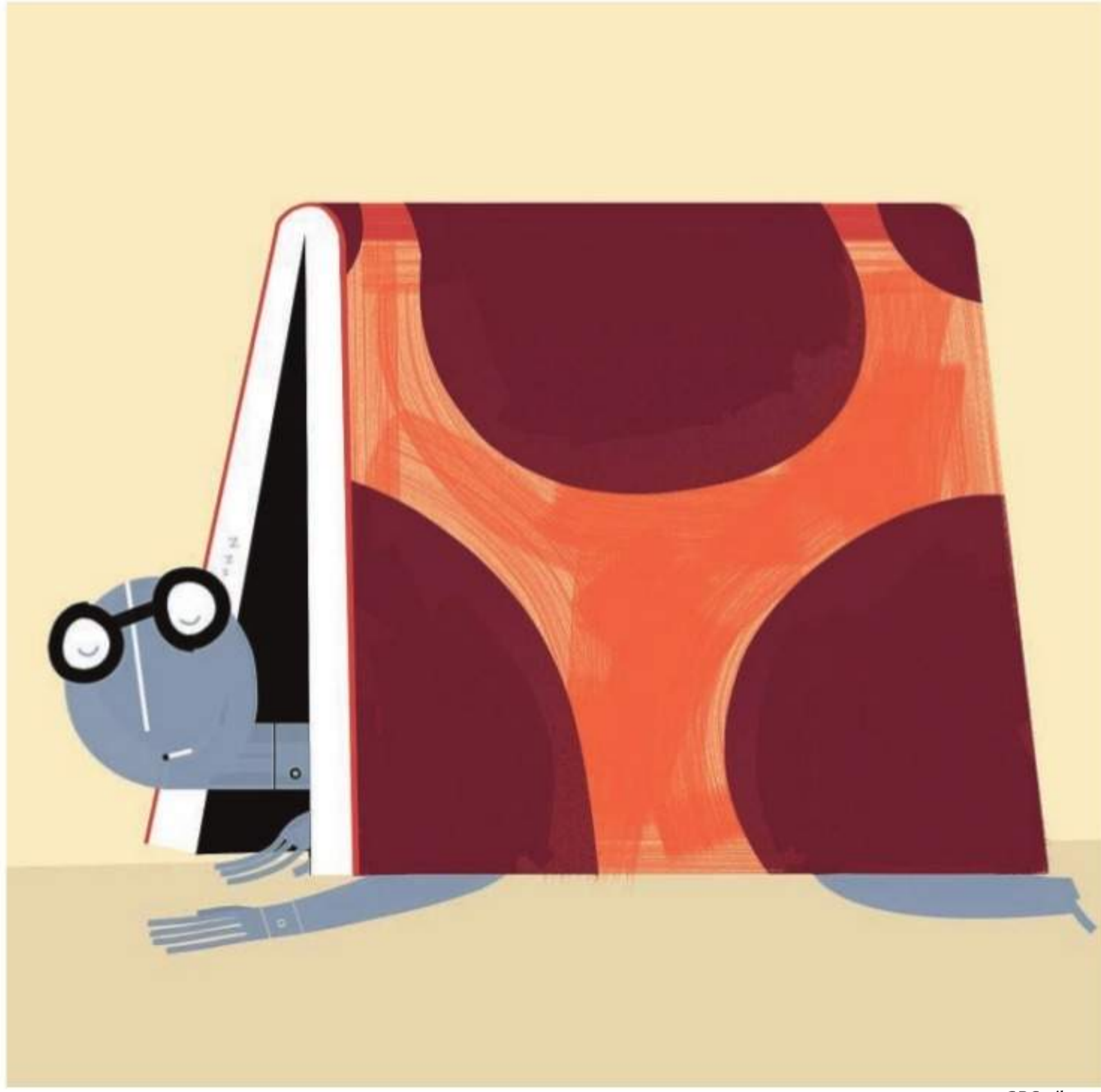
IN DECEMBER LAST year, the PEW Research Centre in New York, a think-tank focusing on public issues released a research study, with findings of a comparison of schooling standards in over 90 countries. The study, 'Region and Education Around the World', focuses on "educational attainment" among the major religions of the world. Its startling conclusion is that Hindus have the "lowest" level of "educational attainment" in the world, and the Indian school educational system is at the bottom of the international league, along with that in Sub-Saharan Africa. The study uses parameters prescribed by the UNESCO for assessing schooling standards, and number of years of schooling as the proxy for education accomplishment, not taking into account the quality of education on offer. The "Christian" average is 9.3 years of schooling, 7.9 years for "Buddhists", while Muslims and Hindus of the world undergo 5.6 years of schooling against the global average of 7.7 years.

The findings of a 2011 study by R.J. Barro of Harvard University and J.W. Lee of Korea University are in conformity with the PEW assessment of Indian school standards. Some years ago, PISA, the measurement standard adopted in Europe and utilised in a large number of countries, studied Indian school quality in two states. The depressing conclusion of the 110-country study was that India ranked second last — beating only Kyrgyzstan in the honours list. Apparently, it is easy to shoot the messenger than accept bad news — India pulled out of the PISA study, thereafter. Alas, the Indian authorities have no reach to ban PEW or Harvard.

The bad news does not end there. The Annual Status of Education Report conducted by Pratham, an Indian NGO with some credibility, had assessed in 2014 that 75 per cent of all children in Class III, over 50 per cent in Class V and over 25 per cent in Class VIII could not read texts meant for Class II. Further, reading levels for all children enrolled in government schools in Class V showed a decline between 2010 and 2012. National Survey Sample results in 2015 indicated sharp decline in learning outcomes in mathematics, science and English in the secondary schools. A recent study in Delhi has come out with the finding that only 54 per cent of the city's children can read something — it could be only a sentence. One will have to be extremely obtuse to not realise that the Indian school education system is in terrible shape — even if it is not the worst in the world.

There is ample evidence that the Indian child is as good a learner as any in the world. Indeed, Indian Americans are among the highly educated communities in the US, according to PEW. It is just sheer lack of basic opportunity that has kept the Indian child at very low education standards — a proof of apathy in governance.

What ails the system — well, nearly everything. The main problem, as in other fields, is the abysmal quality of governance, with politics permeating every aspect of educational administration. Factors other than merit play a significant part in the management of affairs; proper governance standards, with adequate incentives, and checks



CR Sasikumar

and balances, have not been put in place (deliberately?). The focus of the entire structure at the Centre and the states is on the minister, secretary, and the educational regulatory institutions — not on the student, teacher, principal and school.

The system is not "inclusive" and does not give a second chance to the weaker sections. The fundamentals of teacher management, teacher education and training as well as school governance and management are lacking at every step. The curriculum is rote-oriented and little practical thought has been given to pedagogy at any stage. The school-level data are unreliable. The access promised to the Economically Weaker Sections (EWS) has hardly been implemented. The infrastructure promised in the Right to Education Act (RTE) is scarcely visible on the ground. The list can go on — wherever you look, reforms are urgently required.

Don't the policymakers at the Centre and the states — the politicians, the ministers and the bureaucrats — know the ground realities and the depth of the problem? Indeed a few are aware. Others see their association with the education department as transient — they do not want to know or to learn. It is comforting not to know. Those who know the reality do not want to take any initiative which will disturb the strong vested interests which have permeated every element of the education space. The authorities are quite content to be busy handling the day-to-day operational management crises, or happily exercising their patronage when-

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ever they can. Periodical tit-bits of superficial "reforms", and headlines attracting media publicity is adequate to give the impression that management of the sector is sound, and that "reforms" are being undertaken. In short there is no urge in the Centre or the states to drastically improve the situation of school education.

Indeed, in every public and closed-door education-related meeting, there is no shortage of reference to Saraswati, the goddess of learning, or of pontification on the critical and seminal role played by education in the development of the country. These are pure formalities, with zero intention of converting them to practice. After all, the children have no votes; the parents are not organised and are at the most, able to find fault with the local school, and not go on to the root cause. Who is going to start the transformation of the school sector? No politician or bureaucrat is interested, as it will take at least a decade for results to show.

Major, far reaching, reforms are under way in the economic sector. The present government has commenced important steps to address the black economy and electoral reforms. Only if and when the prime minister starts taking a personal interest will things start moving in the education sector. For India's medium-term prospects of stability, and for the country to play a rightful role in world affairs, it is imperative that the Centre takes this as a major area for intervention.

The writer is a former Cabinet Secretary

## WHAT THE OTHERS SAY

"President Trump insists on demonising Iran, turning a complicated relationship into a volatile one."

—THE NEW YORK TIMES

# Regaining trust

RBI must use the banking ordinance to deal with its credibility crisis



PRADEEP S. MEHTA AND AMOL KULKARNI

SINCE NOVEMBER 8 LAST year, the Reserve Bank of India (RBI) has been facing a credibility crisis. It had to deal with a barrage of accusations for toeing the government line on demonetisation. Even six months after the decision, its refusal to disclose minutes of the fateful meeting in which the demonetisation decision was taken has made several ardent RBI fans sit up and notice, with some concern.

The RBI has defended its decision on the grounds of national/economic interest, without expounding how such interest is served with its action. It has used similar rationale for refusing to make public the list of loan defaulters with public sector banks. In effect, the RBI is asking us to put our complete and unquestionable faith in it, which is further eroding public trust on it. This situation needs to be quickly addressed before it is too late.

These are times when any question or dissent against government decision runs the risk of being labelled as anti-national. As a result, while the intelligentsia is increasingly becoming sceptical about government functioning, in some cases, the government is repeatedly resorting to excessive delegation and allowing the unchecked use of discretion by the executive and regulators.

A recent example is the Banking Regulation (Amendment) Ordinance, 2017. The ordinance empowers the central government to authorise the RBI to issue directions to banking companies to initiate insolvency. It also empowers the RBI to issue directions to banking companies for the resolution of stressed assets. However, the ordinance fails to provide any indication on the process which the government or the RBI need to follow to arrive at a decision and presumes good faith on the part of the officers in the government and the regulator. It trusts that such officers will arrive at the right decision. It has been reported that this mechanism is to facilitate unfettered decision making without the fear of the 3Cs: CBI, CVC and CAG.

Consequently, commercial decisions like haircuts taken by banks, taking over of management/ resolution reference of corporate borrowers and the restructuring of loans, will be guided by the government and no longer be subject to stringent scrutiny they deserve. While government officers might work with best intentions, trusting individuals over processes can never be a wise option.

The RBI promised to develop a framework to facilitate an objective and consistent decision-making process for resolution reference. It constituted an internal advisory committee, which recently recommended accounts with an outstanding amount greater than Rs 5,000 crore with

60 per cent or more classified as non-performing on March 31, 2016, for reference under the insolvency and bankruptcy code. It is not clear why a cut-off date of 2016 was chosen. Substantial provisioning would have already been done for such accounts. These cases are expected to get priority at the National Company Law Tribunal. The mechanism for according such priority treatment is not clear.

A better alternative would have been promoting transparency in the decision-making process. A standard operating procedure must be developed through comprehensive stakeholder consultation and released in the public domain for arriving at decisions and for recording the rationale and process adopted. Decisions where clear rationale is absent or lacking the necessary transparent process run the risk of ruining market confidence and denting the country's growth story.

The RBI has recently issued an action plan to implement the ordinance. It is primarily to nudge the consortium lenders in a joint lenders forum to arrive at a decision regarding corrective action plan, which involves restructuring. Henceforth, it will become easier to refer stressed assets to the corrective action plan, and approval of special majority of bankers (by value) will no longer be necessary. This is not necessarily the best way out, and must be debated. Alternatives requiring time-bound decision making, backed by sound rationale could be considered.

In addition, the action plan envisages a greater role for credit rating agencies. Given the conflict of interest concerns, the RBI is exploring the feasibility of rating assignments being determined by itself and paid from a fund to be created out of contribution from the banks and the RBI. While such a mechanism could partially deal with the moral hazard of the rating business being incentivised by banks, it does not deal with the core concerns of a sub-optimal rating process, as highlighted in the aftermath of the transatlantic financial crisis.

The RBI must require rating agencies to make their processes transparent, objective and subject to public scrutiny. Further, in the proposed mechanism wherein the RBI makes part payments to rating agencies, it may find itself conflicted between the need to obtain a cost-effective and a high quality credit rating. Consequently, alternatives like independent bodies to select credit rating agencies could be explored.

Hitherto, the RBI has adopted an incremental approach in dealing with the bad debt issue and offered several lifelines to the banks and borrowing companies. Unfortunately, this has not borne fruit. The RBI must use its enhanced powers under the ordinance to adopt a transformational approach to deal with bad debts, and regain trust in the regulator. This can happen only when it takes hard decisions including designing transparent decision-making process, fixing accountability, and punishing non-compliance, especially its own officers. It must encourage the culture of dissent and debate, promote public disclosures, and welcome scrutiny to regain its credibility and public confidence.

The writers work for CUTS International

# In bad faith

On triple talaq, let's not misrepresent the law and the facts



BALAJI SRINIVASAN

THE INDIAN EXPRESS carried an opinion piece relating to the triple talaq case headlined 'Whose fight is it anyway?' (IE, June 12). The said piece betrayed complete disregard to the facts relating to the case. The piece was not really concerned with the truth of Shayara Bano's writ petition or the Shamim Ara judgement, both of which were referred to in the article and distorted by utter misrepresentation. All of this is in addition to the fact that the opinion piece questioned the motivation of the lawyers representing the petitioner-women and, even worse, the motivation of the women themselves.

To begin with, the piece alleges that Shayara Bano's brother contacted a lawyer in the SC to file a transfer petition, who filed an "intervener [sic] application" instead of a transfer petition. First, no intervention application was filed by Bano — it is a very well-known and widely reported fact that she filed a writ petition and the All India Muslim Personal Law Board "intervened" in the case. Second, a transfer petition was filed (much prior to the writ petition), seeking to transfer from Allahabad to Kashipur, a case filed by Bano's abusive husband seeking restitution of conjugal rights (which the piece laughably refers to as "a modern remedy", but more on this later).

A writ petition is the only remedy to secure the enforcement of fundamental rights. To end gender discrimination, Bano filed a writ petition challenging instantaneous triple talaq (*talaq-e-biddat*), *nikah halala*, and polygamy. The thrust of her case was that she cannot be denied her fundamental rights, to which all citizens are equally entitled, merely on the basis of her religion. The hope was to secure the fundamental right to live with dignity unmarred by discrimination, which transcends religious lines, especially in this era of human rights and international covenants decrying gender discrimination. Accordingly, Bano's writ petition states: "There is no protection against such arbitrary [instantaneous triple talaq] divorce. Muslim women have their hands tied while the guillotine of divorce dangles, perpetually ready to drop at the whims of their husbands who enjoy undisputed power. Such discrimination and inequality hoarsely expressed in the form of unilateral triple talaq is abominable when seen in light of the progressive times of the 21st century."

The opinion piece also asserts, without basis, that the women petitioners themselves do not see the case as a "game changer". Given that the piece was written with utter disregard for the facts, one wonders what magical powers enabled such a conclusion to be drawn! One also wonders

how the declaration of instantaneous triple talaq as illegal (as done by many Islamic States including Pakistan and Saudi Arabia) will not be a "game changer" for the Muslim women of India who seek freedom from oppression and gender discrimination.

The article questions how the verdict of the triple talaq case will help to secure the rights of Muslim women, given that their "core concerns are incompatibility, domestic violence and a *talaqnama* drawn by lawyers". This is the most myopic and presumptuous view possible. The petitioner-women are not proverbial "frogs in the well" who must only think of securing marital bliss with abusive husbands; rather, they sought to challenge oppression and gender discrimination that offended their human right to live with dignity. Unfortunately, the article decided for the women-petitioners what their "core concerns" are, or should be! It was, however, not very surprising, given that piece declared restitution of conjugal rights a "modern remedy". For the uninitiated, abusive husbands are able to use the said remedy to coerce their wives to return to the matrimonial home and subject them to further abuse/cruelty, including marital rape.

The opinion piece also offers an incorrect legal opinion. Given that the triple talaq case was heard for six days by a

Constitution Bench of five judges, one wonders what legal qualifications or enlightenment form the foundation of the opinion that the issue of instantaneous triple talaq is "already settled" by the Shamim Ara case of 2002. Most worryingly, such legal opinions founded on ignorance and/or willful disregard for the truth tend to misguide the general public. They also tend to try a pending legal matter by way of public opinion fostered by a media trial. Let it, therefore, be clarified that the incorrect opinion was expressed despite the Supreme Court having orally rejected that the Shamim Ara case has settled the issue.

In their fight for the right to a life of dignity unmarred by the trauma of gender discrimination, the women-petitioners certainly do not need to be educated what their "core concerns" should be and what will be a "game changer" for them. It is for the SC to decide what rights and protections need to be granted and what limitations (if any) may be placed on such rights. One must await the outcome till the apex court pronounces its judgment.

The writer represents Shayara Bano, the petitioner in 'Shayara Bano versus Union of India and Others', widely referred to as the triple talaq case

## LETTER TO THE EDITOR

### CROWN OF THORNS

THIS REFERS TO the editorial 'Stormy weather ahead' (IE, June 26). By appointing young Mohammed Bin Salman Al Saud as a Crown Prince of Saudi Arabia, the ageing King Salman bin Abdulaziz Al Saud has re-affirmed his faith in a younger, more dynamic person to rule the conservative country. The crown prince's appointment comes at a time when the kingdom is mired in number of crises like drop in oil price, the Arab Spring, war in Yemen and more recent crisis with Iran and Qatar. Besides, maintaining good relations with the OPEC and GCC, the new prince need to keep regional balance and his reputation as a bold reformer.

Gregory Fernandes, Mumbai

### CITY DREADFUL

THIS REFERS TO the editorial, 'City that includes' (IE, June 26). The political establishment and government desires to make our cities, railways, roadways, and many other things "world class". It remains a mystery, though, how this noble intent will be actually be achieved. All our cities across the the country are strewn with piles of garbage, roads are clogged with chaotic traffic and jay-walking public, and the parking plazas lack paid multi-tiered parking facilities.

Satish Hardas, Pune

### NO REPITITION

THIS REFERS TO the article, 'Memories of another June' (IE, June 26). Fali S. Nariman points out that dictatorial rule can only be imposed when a majoritarian government is in power, as was the

### LETTER OF THE WEEK AWARD

To encourage quality reader intervention, The Indian Express offers the Letter of the Week award. The letter adjudged the best for the week is published every Saturday. Letters may be e-mailed to editpage@expressindia.com or sent to The Indian Express, B-1/B, Sector 10, Noida-UP 201301. Letter writers should mention their postal address and phone number.

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case in 1975, because such a government was then in office with a strong, energetic and popular PM. Constitutional dignitaries and even some of the judges of the Supreme Court failed us then. At present too, a majoritarian government is in power and a PM no less strong, energetic, and popular than Indira Gandhi. However, some factors — a powerful electronic media, unsparing social media, unbending judiciary, and a President who would refuse to sign on dotted lines — would not allow the government to take the course Indira took in 1975.

M.C. Joshi, Lucknow