

Boomerang CEOs

Despite his formidable skills, Nandan Nilekani's return to Infosys is a band-aid solution



HUMAN FACTOR

SHYAMAL MAJUMDAR

The return of Nandan Nilekani to Infosys, a company he left a decade ago, is being celebrated by almost everybody. No one can dispute the fact that the celebrated co-founder and former CEO of Infosys has the moral and intellectual heft to quell the ongoing management turmoil. Infosys, Nilekani's well-wishers

say, needs his healing touch to come out of its biggest crisis.

The excitement over Nilekani becoming non-executive chairman is a reminder of the celebrations four years ago when N R Narayana Murthy came back to Infosys as executive chairman after the board invited him to "steer the company back to its previous glory". The crisis then had nothing to do with corporate governance but with financial performance. In the previous two years, the company had missed its revenue and profit growth forecasts several times and was overtaken by Cognizant in annual revenue.

After taking over, Murthy had famously said, "This calling was sudden and most unusual. But, then, Infosys is my middle child. Therefore, I have put aside my plans-in-progress and accepted this responsibility." Nilekani didn't repeat that exactly,

but said he was happy to return to Infosys to capitalise on the business opportunities. Murthy left Infosys within a year after appointing a professional CEO; Nilekani might do the same.

But is this the right way to go for a company such as Infosys? It's debatable whether going back in time — twice in a span of four years — by bringing back a once-proven leader at the top is the correct thing to do when Infosys desperately needs to be made future-ready. It's clear that the founders and the board have failed miserably in managing a natural transition to professional leadership in a company where the shareholding pattern is widely dispersed and promoters' share is minuscule. In any case, barring the three-year stint of Sikka, each of the founders had a turn at being CEO; so there was no reason to go in for a short-term solution of bringing Nilekani back, however successful he might have been in his earlier stint at Infosys. Though his designation is non-executive chairman, there is no doubt in anybody's mind about who would be guiding the fortunes of Infosys as long as he is there.

Infosys' founders would perhaps do well to look at the track record of "boomerang CEOs", commonly known as returning CEOs. The record has, at best, been mixed, except for the spectacular comeback of Steve Jobs at Apple, who was forced out of the company in 1985 after losing a power struggle to then CEO John Sculley. Jobs was invited to return to Apple in 1996 and turned the computer maker into a technology powerhouse.

Most others could not provide the Midas touch everyone expected. Consider Procter & Gamble's experiment with its former CEO, A G Lafley, who was asked to come out of retirement in 2013 and bail the company out of trouble. Lafley's return was then seen as just what the doctor ordered and a Bloomberg headline said it all: "P&G looks for a Steve Jobs-like sequel". Unfortunately, that sequel remained just a wish, as Lafley had to step down two years later following P&G's indifferent financial performance.

There are many other examples: Jerry Yang of Yahoo!, who co-founded the search engine with David Filo in 1995, and Mark Pincus of Zynga, who

returned as CEO of the struggling game maker in 2015 but wasn't able to do much. The most spectacular failure has of course been Kenneth Lay, who returned as CEO of Enron in 2001 and could only see the company crumble in his hands.

The best argument for "boomerang CEOs" is that they are known quantities, and will thus reassure both employees and investors. And in times of crisis, many companies may not have the time to do a comprehensive search for a new CEO. It makes sense then to bring back the person who likely knows the company better than anyone — its founder and former CEO.

But the counterargument is that founders can't consider themselves to be indispensable — as if the company would crumble if any of them is not part of the real action. The most obvious result would be that real talent would like to keep a safe distance from such companies. That would be the real loss for Infosys. Narayana Murthy and his co-founders built a great company. It might have become even greater had they left it to their professional successors to take it to the next level.

CHINESE WHISPERS



Father and son on opposite sides

A nine-member bench of the Supreme Court unanimously ruled on Thursday that privacy is a fundamental right of every citizen. Among them was Justice D Y Chandrachud (pictured), who wrote a separate judgment on behalf of himself and three other judges and overruled a past judgment by his father, Justice Y V Chandrachud, during the Emergency years of 1975 to 1977, calling it "seriously flawed". Chandrachud junior said that "neither life nor liberty are bounties conferred by the state nor does the Constitution create these rights". Fundamental rights were suspended during the Emergency and a five-judge Supreme Court bench that included Chandrachud senior had backed it in the 1976 case known as "ADM Jabalpur".

After historical verdict, a farce

Soon after the chief justice's court delivered the historical right to privacy judgment on Thursday it also saw the low end of litigation. Two swamis, dressed in robes, challenged the appointment of the chief justice-designate, Dipak Misra, on vague grounds. The court patiently heard them vigorously arguing in Hindi for an hour, peppered with hilarious moments, but in the end the chief justice imposed ₹10 lakh as fine on each of them for wasting judicial time and indulging in "publicity stunts" through public interest litigation.



Back to the soil

Why did Rashtriya Janata Dal chief Lalu Prasad (pictured) ask people to join his August 27 rally with a handful of soil? That, he said, was his way of reminding Bihar Chief Minister Nitish Kumar of something he had said about three years ago. "Mitti mein mil jayenge par BJP ke saath nahi jayenge (I will get reduced to ashes but will not go with the BJP)," he had said at a rally in 2014. So Prasad urged his supporters to join his rally with a handful of soil for Kumar. All that soil, Prasad said, would be kept at one place and he would ask Kumar to bury himself in the heap.

It's time to think beyond fuel

With fuel retailing evolving like never before, the possibilities are many as long as retailers are willing to innovate



KAUSTUBH VERMA & RAHEEL S PAI PANANDIKER

Vinay, a mid-level management executive in a multinational company, lives in Dwarka, a large suburb of New Delhi. Every day he drives from home to his workplace in Gurgaon and hence fuels his car from a nearby petrol pump two to three times a week. But Vinay hates fuelling. He considers fuelling his car a needless distraction and almost a waste of time. Well, things for Vinay and the millions of others who frequent the 50,000-plus petrol pumps across the country are about to change. Welcome to Fuel Retailing 2.0 in India, where one can avail of a plethora of "non-fuel" services at a petrol pump in addition to or beyond fuelling.

What "non-fuel" services are we talking about?

Definitely not a one-size-fits-all proposition. A petrol pump in a village could transform itself into a "centre" or a "marketplace" for services that are absent in India's hinterland such as financial remittances and online educational courses. A highway petrol pump could develop itself into a natural stopping point, with vehicle maintenance workshops or tele-medicine outlets. In urban India, it could mean having access to a coffee shop and a bank at the forecourt. The possibilities are endless as long as

fuel retailers are willing to innovate. We believe that "non-fuel" is just one sliver of the growing strategic focus that fuel retailers in the country will need in their "beyond fuel" strategy.

The time is ripe to start thinking "beyond fuel"

Fuel retailing is evolving like never before, with multiple dynamic forces at play, which makes it imperative for fuel retailing firms to have a "beyond fuel" plan.

First, there are signs that the fuel retailing landscape is on the verge of increased competition. In a recent article, Minister of State for Petroleum and Natural Gas Dharmendra Pradhan stated that the government would review — and possibly relax — regulations governing the entry of foreign firms into the country's fuel retailing business. This will potentially lead to intense competition between incumbent fuel retailing companies and potential candidates looking to enter the country's lucrative fuel retailing market. As per the British Petroleum's Energy Outlook Report for 2017, India's oil consumption will continue to grow at a compound annual growth rate of four per cent during 2015-2035. This is significantly higher than growth rates for the world (0.7 per cent), North America (minus 0.7 per cent) and even China (2.4 per cent).

The increase in competition will lead to a high supply base in terms of fuelling stations and an ensuing price war for a "commodity" to maintain traffic. This is bound to put margins from the fuel business under pressure. This has happened in other geographies before. Chile, a rapidly growing oil economy, experienced deregulation in 2005, leading to the entry of Petrobras and Terep in 2008 and Lukisik in 2011. What followed was intense competi-



PHOTO: ISTOCK

tion between the Chilean national oil company, Copec, and the new entrants, leading to price pressure and declining fuel margins.

Second, emerging trends such as shared economy (think Uber, Ola etc) and electric vehicles (EV) may disrupt the oil industry itself. Tony Seba, a Stanford University economist, recently predicted that "no more petrol or diesel cars, buses or trucks will be sold anywhere in the world within eight years". In addition, the Indian government's goal is to have an all-EV fleet on Indian roads by 2030. While the exact dates and technologies may be in question, the death knell for oil as transportation fuel seems to have been sounded — oil is now officially a "dead man walking".

Third, the drop in oil prices has resulted in an unprecedented windfall

for these companies, making them cash-rich. The FY 16-17 combined net profit of the three major oil marketing companies is almost ₹33,500 crore. This is 2.5 times the combined net profit of the 21 public sector banks in India! This money should be used to invest in new offerings, services and technologies, which go beyond fuel.

Last but not the least, India is in the midst of a massive consumption boom. Even assuming conservative gross domestic product increases of six to seven per cent a year, consumption expenditure in India is expected to rise by a factor of three to reach \$4 trillion by 2024 (BCG's report, "The New Indian: The Many Facets of a Changing Consumer", March 2017). This presents a massive opportunity for fuel retailers, who have "access" to millions of consumers, whom they have served

through fuel and LPG touch points.

What do fuel retailing companies need to do?

There are specific steps that fuel retailing companies can take. First, these companies will have to "protect the core" by being efficient and effective in fuel marketing to protect their market share and deliver on customer expectations.

Second, they must think "beyond fuel" structurally and strategically, and not just as an add-on. Addition of non-fuel services, which resolve customer pain points and create customer value, is a good starting point, which will require a deep understanding of the customer segments that they serve.

Third, they must embrace digital, which will be a key component of "beyond fuel" and a vehicle to generate customer delight. The potential digital opportunities that fuel companies can tap into are wide-ranging — from implementing digital payments at the forecourt to completely cloud-controlled retail outlets with live feedback systems, to doorstep fuelling using digital platforms.

Last but not the least, these companies can also develop "corporate ventures" and take investment bets in other parts of the value chain and even non-fuel initiatives. They can do so by intensifying internal research and development efforts and setting up "accelerators", which can help them scan new business ideas, or taking equity investments in start-ups.

There was a time when Vinay used to go to fuel outlets to fuel his car. That time is changing fast.

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BUSINESS LIFE

China's future, reshaped by robots

Automation may upend the prevailing wisdom

TOM ORLIK

Speak to China experts these days and you typically get one of two contrasting views on its outlook. The prevailing wisdom is that an unreformed state-industrial sector and rising debt mean it is on an unsustainable path, with a financial crisis on the not-too-distant horizon. The optimists acknowledge that debt is too high, but hold out hope that a growing services sector will fuel stronger consumption, reducing the need for credit-fuelled investment and putting the economy on a sustainable path for the medium-term.

What if they're both wrong? That's the possibility suggested by the rapid automation of China's factories. In 2016, China installed 87,000 industrial robots, up 27 per cent from the year before and a record for any country. Annual growth could continue at a 20 per cent pace to 2020, according to the International Federation of Robotics. And that's likely just the beginning: President Xi Jinping has called for a "robot revolution", as China overtakes the manufacturing capacity of other countries. "We will make robots until there's no more people in factories," says Max Chu, general manager of E-Deodar, a robotics start-up.

What might that mean for the economy? At home, the news is mixed. One benefit is that automation should increase productivity. In South Korea, which has the highest robot density of any major economy, profit per worker at auto firms was \$152,000 in 2016. In China, it was just \$48,000. Along with aggressive efforts to boost technology in other fields, automation has the



Automation will likely erode incomes for those with fewer skills

PHOTO: ISTOCK

potential to bolster China's competitiveness and sustain rapid growth. As its workforce ages and starts to shrink, factories staffed with robots won't feel the pinch.

For workers, though, the news might not be so good. In China, as everywhere else, automation will likely erode incomes for those with fewer skills. China already ranks alongside some African and Latin American countries in terms of inequality. Based on data from the China Household Finance Survey, the richest 10 per cent of households account for 50 per cent of income, at the expense of a smaller share for everyone else.

Higher inequality, in turn, could impede China's transition towards a consumer-driven economy. China's rich do almost all of its saving, while poor and some middle-class households save little or nothing. By skewing income distribution even more toward the rich, automation risks further increasing China's very high savings rate, and further eroding

its very low consumption. If that happens, the two other sources of demand — investment and exports — will become all the more important.

For China, that might work out OK. On the export side, by boosting competitiveness, automation could allow China's factories to maintain their hold on low value-added parts of the production chain, while moving further into higher-value areas now dominated by Japan, South Korea and Taiwan. As for investment, high saving by rich households will mean that banks stay amply funded. Weak consumption will keep a lid on inflation, allowing the central bank to keep interest rates low and credit flowing.

For the rest of the world the picture looks less positive. China's industrial strategy will chip away at the remaining competitive advantages enjoyed by American, German, Japanese and Korean companies, putting high-skill jobs at risk.

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LETTERS

Kill the ambiguity

With reference to Harsh Roongta's article, "Where there is a will, there is a dispute" (August 24), the fact is we have laws so loose and practices so vague that certain parasitic elements — lawyers, agents, land development agencies such as City and Industrial Development Corporation and housing societies — find it convenient to thrive. It is the individual who suffers.

Why can't the law on wills stipulate a proper format, witness requirements, notarisation etc so that it cannot be challenged and courts can refuse to entertain cases, except in the case of a forgery? More than 80 per cent of cases in the courts would then disappear. It must be stipulated that all immovable and moveable assets, financial assets etc, where a third party such as a bank, company or a housing society is involved, unless held in two names, must compulsorily have nominee(s). The third party concerned must obtain the know-your-customer documents of nominees. When the holder/owner dies, the authority should have no choice but to transfer the assets to the joint holder, if any, or the nominees without question. The need for a succession certificate, letter of administration etc should not arise. A notarised death certificate, which necessarily has the PAN and/or Aadhaar details of the deceased, should be sufficient.

Once such laws are framed, courts would be free of disputes. Perhaps, this is what the establishment does not want. It uses loose laws and ambiguous practices to provide parasitic employment, revenues as well as under-the-table payments. I have had personal experience of all this recently.

TR Ramaswami Mumbai

Prescribe the right pill

"Not what the doctor ordered" (August 24) is a great editorial, offering focused suggestions to improve the scope and implementation of the new pharma policy.



which allows manufacturers to offer abnormally high "discounts" — at times, 50 per cent or more. This creates room for malpractices and exploitation of the patients. 2) Doctors must be encouraged to prescribe generic drugs and not specific brands — another "trick of the trade" to fleece patients. The UK has followed this practice for a very long time. 3) Expiry dates on drugs seem to be deliberately short. Several studies have found that to be so. Expiry dates should be rational.

Krishan Kalra Gurgaon

Not a cakewalk

With reference to the Chinese Whispers item, "Musical chairs at Infosys?" (August 24), considering the upheaval at the company, it's clear all is not well.

Nilekani's return may not see a miracle taking place, with four directors, including Chairman R Sheshasayee and Ravi Venkatesan bidding goodbye.

Tackling the crisis will not be a cakewalk even for the experienced Nilekani. Narayana Murthy might also be obliged to prove his mettle.

Vinayak G Bengaluru

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HAMBONE

BY MIKE FLANAGAN



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The new fundamental

SC's ruling on the right to privacy is historic

A nine-judge Bench of the Supreme Court has issued an emphatic order in favour of the right to privacy being a fundamental right under the Indian Constitution. Till now, the status of the right to privacy was shrouded in mystery. That is because while many previous judgments (by smaller Benches) of the apex court treated it as a fundamental right, two of the older judgments – M P Sharma v Satish Chandra (1950) and Kharak Singh v The State of Uttar Pradesh (1962) – which were delivered by bigger Benches, had differed. As such, things came to a head when several petitioners questioned the Union government's collection of biometric data and iris scans for Aadhaar numbers on the grounds that it violated the citizen's fundamental right to privacy. As both the government and private companies were increasingly privy to biometric and other personal data, this concern for privacy grew louder. It is welcome that despite its initial opposition to the concept, the Union government has gracefully accepted the order.

Pronouncing the landmark ruling, the Supreme Court stated that the right to privacy emanated from Article 21 of the Constitution, which safeguards the right to life and personal liberty. The court did not leave anything to doubt when it stated: "Privacy is the constitutional core of human dignity... (it) also connotes a right to be left alone". This definition of privacy covers the sanctity of one's "sexual orientation" as well. The court also underlined it was not amending the Constitution or usurping the role of the legislature, it was merely protecting the rights of each individual. While the apex court abstained from providing an exhaustive list of entitlements drawing from the right to privacy, it did crucially state that it contained both positive and negative aspects. The negative aspect restrains a government from "committing an intrusion upon the life and personal liberty" of a citizen while the positive aspect imposes an "obligation on the state" to take all necessary measures to protect the privacy of the individual.

Both – the unanimity of the decision and the articulation of what is privacy – are likely to have widespread ramifications. Though the constitutional validity of the Aadhaar card was not being argued, individual information contained in Aadhaar provides the immediate context of Thursday's judgment. It is possible that the government will be forced to review the areas in which it makes the use of Aadhaar mandatory. Moreover, in time, several other rulings and laws are likely to come under questioning. For instance, the apex court ruling upholding the Indian Penal Code criminalising sex between two consenting adults of the same sex is one issue that could, and should, merit revision. Similarly, the ruling will affect the use of personal data by private firms such as WhatsApp and Facebook since the court also roped in the threat to privacy from "non-state actors" and commended the government to put in place a robust data protection regime in the country; it referred to the BN Srikrishna committee in this regard. Of course, like all fundamental rights, this one too will be limited by reasonable restrictions. In fact, apart from "the legitimate aims" of the state such as national security, the court crucially added "the dissipation of social welfare benefits". This leaves the window open for the use of Aadhaar being made mandatory for welfare schemes, something that should please the government.

Reneging on contracts

Discoms renegotiating PPAs is a worrying trend

The central government has set ambitious targets for renewable energy generation in India. It has said that by 2022 India will have 175 GW of renewable energy installed, and that by 2030, 40 per cent of power will come from non-fossil fuel sources. The constantly falling unit price of renewable energy – partly as a consequence of technological innovation – has led to considerable investment in the sector, and an expansion of purchase of power from renewable energy sources by distribution companies (or discoms). However, there is a darker side to the price fall as well. Some discoms are attempting to get out of existing power purchase agreements. This is a worrying trend with severe implications for the health of the sector, of banks, and even for the rule of law, and so it must be speedily checked.

Prices for power from wind energy projects discovered through open bidding fell earlier this year to below ₹3.50 a unit, and from solar energy projects to below ₹2.50 a unit. In the months since these fresh lows were hit, discoms in states as far apart as Gujarat, Jharkhand, Tamil Nadu, Karnataka and Uttar Pradesh have sought to renegotiate power purchase agreements (PPAs) for a better deal. Some of these PPAs were already in effect, others were about to be signed, but the price had already been discovered. The discoms argue in their defence that they are under pressure to achieve financial sustainability. When PPAs have already been decided at a per-unit cost that is several times these new prices, that means that there is scope for renegotiation, they argue. In some cases, this logic has been extended also to PPAs for new thermal power plants – by Uttar Pradesh, for example.

But the discoms' argument does not stand up to scrutiny in most cases. Capital costs are falling rapidly in the renewable space in particular. If the winning bidder for a PPA had bought, or contracted to buy, photovoltaic modules at a particular price, and then the price fell later, they cannot be subsequently penalised. Indeed, even if in some cases the modules have not yet been bought and the winning bidder is likely to make a windfall gain from the falling price, which is an inherent part of the contract. If contracts are not to be cancelled or renegotiated when the price of inputs increases – as when coal becomes more expensive, for example – why should that happen when input or capital prices fall?

The Indian Banks Association has reportedly written a note to the finance ministry arguing that rampant renegotiation has the power to turn some of these projects, which have already been financially closed, unviable. This will add to the burden of non-performing assets in the sector, loans to which are already prominent among banks' stressed assets. A culture of renegotiation will also impair the ability to drum up more investment for renewables, and thus hamper India's ability to achieve the targets it has set for itself. And, finally, renegotiation of bids once an auction has been concluded undermines the entire process. It means that future bids in other auctions will be tainted, and fail to discover an efficient price. The central government must swiftly step in to see these renegotiations go no further.

ILLUSTRATION BY AJAY MOHANTY



Watch out for Xi Jinping's Congress

The president will display his grip on the party and chart his plans for the country's future

This is the high noon of politics in Beijing, with the preparations in top gear for the 19th Congress of the Chinese Communist Party coming up this fall. This Congress promises to be a seminal event not only for the future of China, but also for global politics and economics: The implications of what will emerge from the Congress will extend far beyond China's borders.

Three key outcomes are expected from the Congress: The mapping out of China's strategic goals at the domestic and the international levels over the next five years; an indication on the extent to which President Xi Jinping has further strengthened his grip on power; significant clues about the new architecture of power in Beijing and whether Mr Xi is planning to extend his role after 2022, and if so, how. In that respect, according to the present party rules, five out of seven members of the Politburo Standing Committee should be replaced, along with 11 of the 25 members of the Politburo. One clue: If one or two new appointees to the Politburo are in their mid-fifties this would put them in the right age bracket to be potential heirs to Mr Xi after 2022. The question then will be whether the roles of head of state and secretary general of the party will be split – with Mr Xi possibly retaining the party job.

The crescendo at which the Chinese leader has consolidated his power over the past five years has been remarkable. His ruthless anti-corruption campaign has allowed him to eliminate all potential centres of competing power around retired leaders Jiang Zemin and Hu Jintao, in the Youth League and in the military. He has established a tight grip on all the key "leading small groups" – the committees that set

policy orientations in domains from foreign policy to anti-corruption or national security or economic and financial policies. He then made the Communist Party bestow on him the title of "core leader", giving him a special status above all leadership members – in direct line with Mao Zedong, Deng Xiaoping, and Jiang Zemin. Last July, Mr Xi ensured the elimination of the Chongqing Party Chief, Sun Zhengcai, who was seen as a potential next president and is now accused of corruption. Mr Sun has been replaced by Chen Miner, a rising political star close to Mr Xi. The Chinese leader then highlighted his sole control and authority on the military by presiding alone, in military fatigues, the huge parade and ceremonies for the 90th anniversary of the foundation of the People's Liberation Army, a military that he is restructuring and streamlining into an efficient 21st century fighting force capable of projecting Chinese power.

As the stage is set for the 19th Congress, President Xi's actions have to be seen in light of the three objectives he is aiming to achieve during his tenure of power.

The first is to ensure the long-term maintenance and sustainability of the Communist Party power. Mr Xi has followed upon the assessment of his predecessor Mr Hu that corruption is the greatest threat to the survival of the regime and has launched a ruthless anti-corruption campaign with the twin benefit of getting rid of political rivals while improving his and the party's public image.

However, other challenges are looming ahead as the Chinese society becomes ever more complex, with diversified interests and increasing sophistication. Will the people continue to be satisfied with an extension of their sphere of personal autonomy that



CLAUDE SMADJA

The 'Magna Carta' of privacy

The Supreme Court decision on the right to privacy is a ringing endorsement of human dignity and liberty and surely merits mention as one of the great decisions on civil liberties and fundamental rights. In concurring judgments that are lucid, vigorously reasoned, well-researched, and moving, the Supreme Court has laid out unanswerable rationales for the recognition of the inalienable right to privacy in our Constitution and has persuasively rejected each objection to the same put forward by the government and by the UIDAI. In doing so, the court has once again proven itself to be a watchdog of civil liberties and a worthy sentinel of our essential freedoms.

The court has correctly refrained from defining privacy or delineating definitively its contours. Privacy will develop and evolve on a case by case basis. Considering the long journey of privacy protection from feudal law in Semayne's case decided in 1604 to the exigencies of the information age, such forbearance can only be admired. Like freedom or liberty, each generation will have the chance to define privacy for its age. As Justice Chandrachud records in the majority opinion, "The Constitution must evolve with the felt necessities of time to meet the challenges thrown up in a democratic order governed by the rule of law. The meaning of the Constitution cannot be frozen on the perspectives present when it was adopted. Technological change has given rise to concerns which were not present seven decades ago and the rapid growth of technology may render obsolescent many notions of the present. Hence the interpretation of the Constitution must be resilient and flexible to allow future generations to adapt its content bearing in mind

its basic or essential features."

The court has grappled also with the challenges to the right of privacy in the information age in some detail and has sought to build a framework in which such challenges can be dealt with in future, in relation to threats that arise from the state and from non-state actors both. The finding that privacy entails a positive obligation on the state to pass a law on data protection is welcome. One only hopes that the government will keep them in mind while a new law on data protection is to be drafted.

The learned ruminations on the nature and aspects of the right of privacy will surely resonate in our Constitutional law for a long time to come, not in the least over the issues of informational privacy that will be addressed by the court when the Aadhaar scheme and legislation are argued on merit, and the violation of privacy would have to be justified by law that is just, fair, reasonable, and proportional. Even aside from the Aadhaar scheme and legislation, the decision by itself will substantially alter the landscape of fundamental rights, how they are interpreted, and how they are enforced.

As a unanimous decision by nine judges, this judgment places beyond the pale of controversy the interpretation of obligations from international human rights covenants into fundamental rights under the Indian Constitution. This legal position is different from the United Kingdom and the United States and stands as a hallmark of the creativity of our court in dealing with human rights challenges as the world's largest democracy. The court's categorical rejection of originalism as the governing philosophy of constitutional interpretation also merits praise. Our



RAHUL NARAYAN

remains subject to the whims of the party? How will the new generation – and the next – accommodate itself with a number of constraints that limit the activities of the private sector, and the overwhelming reach of Big Brother watching permanently over their shoulder? How will the regime maintain a control on the key sectors of the economy through the state-owned enterprises while needing the entrepreneurship of the private sector, which is the main source of jobs creation? And, above all, will the regime continue to be able to deliver the ever higher standards of living from which it derives its legitimacy? This rests on the success of the difficult restructuring and transformation of the present economy – with all its imbalances and distortions – into a knowledge-based, technology-driven economy with domestic consumption as its main engine of growth.

Which leads to President Xi's second objective: To be the leader who will have steered China into becoming a "moderately well-off society by 2021" – which means the doubling of the country's GDP between 2010 and 2020. To that aim, the leadership is taking the risk to keep increasing the level of the national debt from 235 per cent of GDP to close to 300 per cent by 2022, according to the International Monetary Fund, which noted recently that "China's credit growth is on a dangerous trajectory". The leadership's answer to this challenge has been the launch of the "Made in China 2025" initiative that aims to boost innovation and technological capabilities in 10 key sectors of the economy of the 21st century, such as automated machine tools and robotics; aerospace and aeronautical equipment; new-energy vehicles; new materials. The goal is to raise domestic content in these sectors – now between zero and twenty five percent depending on the sector – to 70 per cent by 2025. This may put China on a collision course with the US and Europe as its will tend to eliminate US and European corporations operating in China from sectors where Chinese companies will benefit from large government support to achieve this objective.

The third objective of President Xi is to instore "a new model of relations between great powers" – simply put, setting China on a par with the US. Beijing does not necessarily want to supplant the role of the US – except in Asia – but intends from now on to deal with Washington on an equal footing. The success of this strategy rests on continuing to build the country's power projection capabilities, on asserting China's role and claims in the South China sea and on the success of the One Belt, One Road initiative – the ancient silk road complemented by a maritime one – with the aim of building a sphere of co-prosperity with China as its hub and creating a sphere of geopolitical influence.

There is a direct correlation and complementarity between these three objectives. There is no point guessing how President Xi will outline them in the "political report" that he will deliver to the 2,300 delegates at the Congress. However, these objectives will be part of the message. And, they will provide an important element of the overall tone of confidence that President Xi will convey at a time when the leadership in Beijing can only be comforted by the chaos in Washington and the overwhelming perception of a US retreating from its global leadership role.

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Constitution is a living organism not bound by the dogmas of the past.

The court has expressly overruled its infamous decision in ADM Jabalpur and has held that life and liberty are inalienable rights that were recognised by Article 21 in the Constitution, not conferred by it. The recognition that freedom and liberty are not the gift of the government but are inherent in all people as part of natural law is welcome. Forty years down the line, Justice H R Khanna's memorable dissent has been rightly affirmed to be the law of the land.

Further, the court has all but overruled its decision in Naz Foundation, which re-criminalised consensual sexual acts between adult persons overruling the landmark decision of the Delhi High Court – a judgment that has been the subject of much opprobrium and criticism and to remedy which curative petitions remain pending.

There has been much public comment that the right to privacy is an elitist construct and that such esoteric rights must give way to the right to welfare. The court has categorically rejected this view confirming that, "The refrain that the poor need no civil and political rights and are concerned only with economic well-being has been utilised through history to wreak the most egregious violations of human rights."

In 2015 when privacy was referred to the Constitution Bench, the court had the option of choosing to affirm either the fortieth anniversary of the narrow understanding of human rights in its decision in ADM Jabalpur or to celebrate the 800 years of the principles of freedom laid down first in the Magna Carta. It has chosen the latter path and this must be universally applauded.

The writer is one of the lawyers who appeared for the petitioners in this case. Views are his own

Crooked tales from the hills



BOOK REVIEW

UTTARAN DAS GUPTA

Since the beginning of June, Darjeeling – the beautiful hill station in north Bengal, famous for its tea and toy train – has been in shutdown mode, over renewed demands of Gorkhaland. The protests this time, marked by riots, arson, and deaths, were sparked by an announcement of the West Bengal government making Bengali mandatory in all schools of the region. The announcement, later withdrawn, was greeted as an affront by the mostly Nepali-speaking people of the region, and the agitation has continued, affecting every aspect of life in

the hills and proving disastrous for the tea gardens and tourism. According to a report by this newspaper, these industries have taken a hit of about ₹400 crore this year.

Most Bengalis living in the plains have reacted to these disturbances with a mix of disgust and alarm, but academic and columnist Parimal Bhattacharya, once a resident of the hill station, looks at it with a more empathetic lens in his book. "No party with a support base in the plains of West Bengal can dare engage with a statehood demand of the hill people – that will amount to political hara-kiri," he writes, at the end of his book, explaining that for Bengalis it is nearly impossible to think of Darjeeling without blinkers of nostalgia. At the same time, he is sympathetic to the demands of Darjeelingeys: "I don't know if that state will ever be born, and what price in blood will be paid for it, or what its

shape will be. But I do hope that the wounds in the minds of the hill people will heal one day."

Such a response is the result of living in the hill town, where Mr Bhattacharya had gone in the early nineties as a young college professor. As he knows, Darjeeling is not merely a town. "Perhaps Darjeeling is not a town, perhaps it is a narration that is being put together for more than a century now," he writes in the middle of the book. A few pages later, he changes his definition: "Darjeeling exists in a way of seeing, something that is wrapped around this hill town like a mantle of mists."

Mr Bhattacharya has not only mastered this way of seeing, but has also injected himself into this narrative, implicating himself in its fate. Consequently, it is difficult to pigeon-hole his book into a neat genre: It is not only a memoir, or a history, or nat-

ural history, or anecdote – it is everything at once, and more.

The book is informed by other texts: Satyajit Ray's *Kanchenjunga* (1962), Nepali short stories of Indra Bahadur Rai and Indra Sundas, the poetry of Jibananda Das, Rabindranath

Tagore as well as Andrew Marvell, and even esoteric texts such as Fred Pinn's books on Louise Mandelli, a planter and ornithologist, whose great collection of local birds and their eggs now adorn the shelves of the British Museum and the Natural History Museum in Darjeeling. It is also filled with interesting dramatis personae: the narrator's grandfather, his friends and colleagues, his students and strangers, as well as his friend Julia, an English researcher who comes to Darjeeling to study some Lepcha settlements.

Mr Bhattacharya's Dadu – grandfather – was the only person in his family to support his decision to go to Darjeeling, only a few years after the

first phase of the violent Gorkhaland movement that had claimed many lives. "Dadu was a pucca sahib trapped in the body of a Bengali babu... his favourite flower was the daffodil, though he had never set his eyes on one. But daffodils bloomed in

Wordsworth's poetry and that was enough for him." While the description is humorous, Mr Bhattacharya is aware of how his grandfather – and he – were products of the British colonial project in India and the Victorian education philosophy of Thomas Macaulay.

"It was thanks to him [Macaulay] that I went to Darjeeling to teach English literature to the young people of the hills."

This self-consciousness colours his interaction with Julia as well as his student and Gorkhaland activist, Newton Subba. This is important as some might say the Bengali refusal to acknowledge Gorkhaland is akin to a

colonial sentiment. The student explains to his teacher why Bengalis could never understand the Nepali demand for statehood: "In Kolkata people mistake us for the Chinese, and when we got to Delhi we are treated as Tibetan refugees." "But isn't this true about all the people of the Northeast," asks the naive teacher. The prompt reply: "But then they have their own states. We don't."

With Julia, there is a dramatic reversal of positions. "Julia always called our country's Independence the transfer of power... She viewed the town built by her own countrymen from a perspective I did not have... Before I met her, I used to grope my way through the mist of trite nostalgia; Julia offered me bifocals."

NO PATH IN DARJEELING IS STRAIGHT

Memoirs of a Hill Town
Parimal Bhattacharya
Speaking Tiger
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