



## Pursued by danger

Stalking is not a mere annoyance — it is a crime that requires swift punishment

The issue of women's safety comes under the national limelight with shameful regularity. The recent incident of a woman being pursued at night by men in a car in Chandigarh is a reminder that neither law nor public odium is a sufficient deterrent to such crimes. Two men, one of them the son of the Bharatiya Janata Party's Haryana State unit chief, have been booked for stalking the woman. They have been released on bail; Section 354D of the Indian Penal Code, which pertains to stalking, is a bailable offence. This has attracted the criticism that the police did not invoke more stringent provisions. It is believed that the police had originally sought to include sections relating to an attempt to kidnap the woman, but dropped the idea. The use of a particular section depends on whether the ingredients of the offence are present in the actions of the accused. The onus is on the Chandigarh police to show that available evidence is limited to the offence of stalking. The claim that there is no closed-circuit television footage from anywhere along the entire route needs investigating. The victim's presence of mind to call the police in time foiled her pursuers' designs, but not every woman may survive such an ordeal in the same manner. This is one reason why the police, as well as family and friends of the victim, ought to take complaints of stalking seriously, and act at an early stage.

As crimes against women go, stalking is far too often dismissed as harmless. However, it is important to understand how traumatic and inhibiting it is for a woman to be pursued with unsolicited interest, and for such stalking to be considered 'normal'. There are times when stalking contains the seed for a bigger, often violent crime. It should not be forgotten that murders and acid attacks have had their origins in stalking. It became an independent offence in 2013, when the country's criminal law was amended in the wake of the horrific gang rape of a woman in Delhi in December 2012. The hope that expanding the rigour and scope of penal laws would bring down crimes against women has, unfortunately, been belied often since then. The Chandigarh incident reveals that a sense of privilege, flowing as much from gender as political influence, permeates the offenders' actions. The victim's father is a senior civil servant, and it may not be easy to give this case a quiet burial. However, there is another, in fact quite familiar, element: the attempt by quarters close to the accused to cast aspersions on the victim. One can only hope that society has advanced sufficiently to call out such victim-shaming. Stalking tends to dominate the public discourse only when it relates to well-known people or results in violence — this episode should compel a deeper understanding of how widespread this offence is, and how rarely offenders are brought to justice.

## Raging rupee

The RBI should resist the exporters' argument for making the rupee cheaper

The Indian rupee has turned out to be one of the best-performing currencies in the world with a gain of well over 6% against the U.S. dollar this year to date. In fact, the currency hit a two-year high of 63.60 last Wednesday, supported by strong inflows of foreign capital. Around the beginning of 2017, analysts were bearish on the rupee, predicting that it would breach the 70-mark by the end of the year. But strong capital inflow has managed to turn the tide. According to the Reserve Bank of India, foreign portfolio investors invested \$15.2 billion in India's equity and debt markets this year until the end of July. In addition, foreign direct investment in April-May doubled compared to last year. Such generous inflow of capital, of course, is in sharp contrast to 2013 when the tightening of policy by the U.S. Federal Reserve had rattled the rupee. This time around, emerging markets have escaped any such taper tantrum as the Fed's approach towards tightening has been measured. Another major contributor to the rupee's strength is the RBI's hawkish stance, which has pushed down domestic retail inflation to a record low of just around 2%. This has spilled over to influence the external value of the rupee as well. Oil prices remaining stable at around the \$50 mark too has helped as Indians have had to shell out fewer rupees on oil imports. This is reflected in the improved current account deficit, which stood at 0.7% of GDP in 2016-17 compared to almost 4.8% in 2012-13.

Notably, worries about the impact of a strong rupee on exports have risen in tandem — particularly in sectors such as pharma and information technology. There is little doubt that an appreciating rupee will affect the competitiveness of Indian exporters. In fact, it is estimated by UBS that each 1% appreciation in the external value of the rupee causes earnings of Nifty companies to drop by 0.6%. The question, however, is whether it is sufficient reason to tinker with the value of the currency in a way that makes it expensive for Indians to import goods. After all, any protectionist action, particularly in today's low-growth global environment where countries look to steal growth from each other, is likely to draw retaliatory action. This will not bode well for the growth prospects of India or any other country. Exporters should instead be pushed to adapt to the uncertainties of doing business across borders. And the rupee's improving external value should be seen, at least in part, as a reflection of the improving quality of the currency. The central bank has thus clearly done well for now by not fiddling with the value of the rupee. At the same time, it would be foolhardy to take things for granted. Going forward, tighter monetary policy in the West will invariably exert more pressure on the rupee. The RBI would then have to muster greater will to let the rupee find its natural value.

# Why Nehru matters more than ever

Unremembering Jawaharlal Nehru is to forget that there is an alternative to narrow nationalism



NEERA CHANDHOKE

An otherwise ordinary 'first' speech given by India's fourteenth President, Ram Nath Kovind, would have gone unremarked, except for one notable omission. The name of Pandit Jawaharlal Nehru, arguably the foremost leader of the freedom struggle, and India's first Prime Minister, was spectacularly missing from the inventory of prominent Indians listed by the President. Though the government under Prime Minister Narendra Modi has gone to extraordinary lengths to eliminate references to the architect of democratic India, we expect the head of state to stand above partisan party politics. There is cause for disappointment.

A few days after Mr. Kovind's speech, the Bharatiya Janata Party (BJP) published a largish booklet to celebrate the birth centenary of Deen Dayal Upadhyaya. In the section on great leaders of India, 'Mahapurush', the names of Nehru as well as Mahatma Gandhi are conspicuous by their absence. Almost 10 lakh senior school students in Uttar Pradesh are forced to study the booklet, appear for an exam, and be rewarded if they perform well. Many of the 'great men' listed in the booklet have never taken part in the freedom struggle, and never been jailed for combating colonialism, unlike Nehru and the Mahatma. But their names occupy pride of place in oral and written histories authored by the BJP. Leaders who fought for Independence are simply written off.

**The historical perspective**  
The belittling of Pandit Nehru is odd, because the standing of the



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current Prime Minister is not validated by writing out a previous Prime Minister from the annals of history. The future will judge both leaders on their own merit, their success or their failure in managing a complex and plural society, and their credentials as democrats, and their political, economic, and strategic visions. Both have a place in modern India. What that place is, will be decided by history. The current dispensation should take the art of history writing seriously and not reduce it to pamphleteering. History is important for collective self-understanding, because it enables us to understand where we have come from, and how we got from 'there' to 'here'. Without competent histories that allow us to understand our collective past and present, and help us generate visions for the future, entire generations will lose their bearings.

What the philosopher Jürgen Habermas calls the 'public use of history' should be, for this reason, subjected to strong evaluations. Since the craft has a bearing on the human condition, we ought to distinguish between histories that inspire a democratic, critical sensibility to contain and challenge authoritarianism, from those that feed appetites for absolute power. History, of course, must narrate tales of tyrants and despots, so that we take care not to repeat the errors of the past. But it must also

chronicle tales of the triumph of the human spirit, and inspire us to struggle against totalitarianism and suppression of individual freedom.

For the ruling class, history should be important, because it reminds them that absolute power, often won at the expense of human freedom, does not endure. Unexpected moments arise in the life of a society when its members clamour for change, when existing gods are brought down, and new ones erected in their place, condemned to wait for their own downfall. All of us should be wary of changing tides of fortune.

Fortune, wrote the 16th century political theorist of Florence, Niccolò Machiavelli, is unpredictable and inexplicable. She is an active sharer in man's making of history, she produces the unforeseen, and she will never be dominated, but will dominate men. That is why Machiavelli advised the Prince of Florence to study history. The public role of history is to remind rulers that fortune is fickle. After all, Nehru, who once led India to freedom, is vilified in his own country by the benighted cyberspace industry. This is short-sighted, because to unremember the man is to forget that there is an alternative to narrow and energy-consuming nationalism.

Despite all attempts, Nehru continues to be remembered by many for his contribution to the institu-

tionalisation of democracy, establishing institutions of excellence, and his conviction that poverty and inequality in India cannot be tackled by the market. There is, however, more to a good society: solidarity with struggling people within and outside the country.

Nehru, as one of the most distinguished leaders of Third World solidarity, reached out to the rest of the colonised world, and forged a joint front against colonialism and a reinvented imperialism. He was, by temperament and experience, a cosmopolitan. His frequent visits to Europe, his deep familiarity with the past, and his understanding of the contemporary ideologies of the day, from liberalism to Fabian socialism, to communist internationalism, had convinced him that the future of India was incomplete without the liberation of other colonies.

### Role of intellectual journeys

Nehru's commitment to the independence of the Third World had been shaped by intellectual journeys through history, as well as participation in a number of international conferences such as the Congress of Oppressed Nationalities in Brussels in 1927. He played a prominent role in the 1955 Bandung Conference, which set the stage for the emergence of a new bloc, and a new ideology in global affairs. Representatives of 29 countries from the global South, comprising well over a billion people, met to consider and debate on how they could help each other to neutralise the harmful effects of colonialism, and bring economic and social well-being to their people. Towering over leaders who had won their political spurs by piloting their countries to independence were Nehru, Kwame Nkrumah, the Prime Minister of Ghana, Gamal Abdel Nasser, the President of Egypt, Zhou Enlai, the Premier of China, and Ho Chi Minh, the Prime Minister of Vietnam. The

agenda included every topic over which the colonised and the newly decolonised world had agonised for decades — religion, colonialism, sovereignty, and world peace. The Bandung meeting sparked off reflections on the distinct attractions of non-alignment, and of the strengths that a movement of the non-aligned could acquire in global forums.

### A deep cosmopolitanism

Interestingly, if one strand of anti-colonial nationalism focussed on the idea and the imaginaries of the nation, the second moved away from processes of closed identity formation towards other ways of being in the world. Nehru's cosmopolitanism acknowledged that our political identities are forged in and through conversations not only with people who are like us, but people who belong to other cultures, other countries, other societies, and other traditions, but who are like us in many ways.

Contemporary history has not treated this statesman kindly. This is a great pity because today's globalisation is, but not what cosmopolitanism is about. Even as our society globalises at a frenetic pace, it has turned inwards and become claustrophobic. History must remember Nehru, he taught us to look outwards, to express solidarity, and to become, in the process, cosmopolitans. We must remember him because we have lost out on something that is rather important, teaching our children that our imaginations and our energies should be harnessed to the cause of the oppressed over the world, that closed-in societies lead to stagnation if not to certain death, and that such societies circumscribe imaginings and truncate visions. We have, perhaps, become lesser human beings.

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## A gathering crisis

A new regulatory regime for groundwater, that provides for equitable use, is urgently needed



PHILIPPE CULLET

The water crisis India faces is of such a magnitude that urgent measures are necessary to address it. Yet, while the crisis is often discussed, law and policy measures to address it remain insufficient. This is partly due to the fact that the primary source of domestic water and irrigation is groundwater but the media and policymakers still and often focus on surface water. This needs to change as water tables have been falling rapidly in many parts of the country, indicating that use generally exceeds replenishment.

One of the underlying reasons for excessive use of groundwater is the legal framework governing access to the resource. This was first introduced in the mid-19th century when judges decided that the easiest way to regulate this 'invisible' substance was to give landowners what amounts to a right to access groundwater found under their land, even if in the process they also used water found under their neighbours' land. Over the following decades, this led to a framework whereby landowners see

groundwater as their own and as a resource they can exploit without considering the need to protect and replenish it since there are no immediate consequences for over-exploiting it. Access to a source of groundwater has progressively become a source of power and economic gain. The latter has become increasingly visible in recent decades with the propagation of mechanical pumps, which allows big landowners to sell water to others.

### An inadequate framework

The Union government recognised the need to modernise the regulatory framework for accessing groundwater soon after massive expansion in mechanical pumping led to the realisation that recharge could not keep pace with use. The measures proposed were in keeping with the policy paradigm of the early 1970s when a model Bill was first introduced. It focussed on adding some State-level control over new, additional uses of groundwater but did not address the iniquitous regime giving landowners unlimited control over groundwater. This was only taken up by around a dozen States from the late 1990s onwards. The States that now have groundwater legislation based on the model Bill conceptualised in 1970 have on the whole failed to manage to address the problem of falling water tables due to increasing use. In addition,



D. GOPALAKRISHNAN

there is no provision in the existing legal regime to protect and conserve groundwater at the aquifer level. Further, since the legal regime fails to give gram sabhas and panchayats a prevailing say in the regulation of what is essentially a local resource, the present framework remains mostly top-down and is incapable of addressing local situations adequately.

Over the past decade, the situation has become increasingly dire not only in States where water tables are falling but also in those that are less affected by quantity concerns. Indeed, the quality of the water pumped is increasingly becoming cause for concern; thus the worry is about accessing a sufficient amount of groundwater that is not harmful to health. The present legal regime has clearly failed to address the growing mul-

iple crises of groundwater. This has been officially recognised since at least the beginning of this decade, first in the Planning Commission and more recently by the Ministry of Water Resources, River Development & Ganga Rejuvenation. The result is the Groundwater (Sustainable Management) Bill, 2017, which is based on current understandings of groundwater and its links with surface water and on the legal framework as it has evolved since the 19th century.

### Based on decentralisation

The Groundwater Bill, 2017 consequently proposes a different regulatory framework from the century-old, outdated, inequitable and environmentally unfriendly legal regime in place. It is based on the recognition of the unitary nature of water, the need for decentralised control over groundwater and the necessity to protect it at aquifer level. The Bill is also based on legal developments that have taken place in the past few decades. This includes the recognition that water is a public trust (in line with the oft-quoted statement that groundwater is a common pool resource), the recognition of the fundamental right to water and the introduction of protection principles, including the precautionary principle, that are currently absent from water legislation. The Bill also builds on the

decentralisation mandate that is already enshrined in general legislation but has not been implemented effectively as far as groundwater is concerned and seeks to give regulatory control over groundwater to local users.

A new regulatory regime for the source of water that provides domestic water to around four-fifths of the population and the overwhelming majority of irrigation is urgently needed. For decades, policymakers behaved like the proverbial ostrich because the 'invisibility' of falling groundwater tables made it possible not to address the problem immediately. In many places, the situation is now so grave that regulatory action is unavoidable. The proposed new regime will benefit the resource, for instance through the introduction of groundwater security plans, and will benefit the overwhelming majority of people through local decision-making. Overall, the increasing crisis of groundwater and the failure of the existing legal regime make it imperative to entrust people directly dependent on the source of water the mandate to use it wisely and to protect it for their own benefit, as well as for future generations.

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## 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.

### Delhi to Kerala

Union Finance Minister Arun Jaitley's "stern warning" to the LDF government and the CPI(M) on political violence in Kerala is partisan as his mission is to pave the way for the dismissal of the LDF government in Kerala ("Jaitley asks Kerala to put an end to political violence", Aug. 7). He came to Thiruvananthapuram not merely to visit the family members of the slain RSS worker concerned but also to introduce the seeds of intolerance in the State — a "mission" that has been successfully implemented in the northern States. Has Mr. Jaitley or any other BJP Minister visited the family members of victims who have been lynched after allegations of cow slaughter? Why didn't he visit the family members of a teenager who was attacked and thrown off the train he was travelling in?

Maharashtra, Madhya Pradesh, Rajasthan, and Gujarat occupy the top slots as far as political or communal violence are concerned. The Bharatiya Janata Party and the Rashtriya Swayamsevak Sangh are aware that Kerala's secular mindset will not fall easily to their plans of a communal makeover and should desist from fishing in troubled waters.

**B. PRABHA,**  
Varkala, Kerala

No doubt there is a need to put an end to political violence, as mentioned by Mr. Jaitley, but one does wonder why high-ranking BJP leaders still remain mum about communal lynchings that have been taking place since 2014. Mr. Jaitley's visit to Kerala points to selective support. The fact that it took the Prime Minister several months to even mention that lynchings are not

correct is troubling to say the least.

**VINAYAK P. KUMAR,**  
Bengaluru

Kerala is a relatively peaceful State with no religious antagonisms in its society. The violence in question is the result of political conflicts and not communal conflicts. It is disquieting that the BJP-RSS combine in Kerala has now unleashed a 'malicious campaign' to malign the State. How can one forget the Prime Minister's statement bracketing Kerala with Somalia on the infant mortality rate among Scheduled Tribes? The BJP is making its moves under the illusion that the unprecedented resurgence of virulent Hindu nationalism at the national level justifies them. Sections of the "national media" are also making it a moral fight "between RSS pracharaks and CPI (M) goons". Whether the BJP eventually

succeeds in becoming a force to be reckoned with in the State or not will largely depend on what proves to be a more potent centre of affiliation — religion or class and caste. The BJP appears to be laying the groundwork for destabilising the State government.

**G. DAVID MILTON,**  
Maruthanode, Tamil Nadu

### Domestic workers

It is revealing that the number of people described as domestic workers has been going up by leaps and bounds in successive census reports, especially post-liberalisation ("Private power, public apathy", August 7). This shows that the middle classes now rely almost totally on the cheap labour provided by women from precarious economic backgrounds. Apart from economic exploitation, the inhumanity and insult meted out to domestic workers proves that we are yet to emerge as a nation.

The state uses women as a socially unprotected labour force to run programmes such as the midday-meal scheme and ICDS-run Anganwadis. What we need more urgently is a state committed to the Constitution's vision and promise of an egalitarian social order.

**FROZ AHMAD,**  
New Delhi

### Reviving tolerance

India is in a phase of change with two new faces occupying the top constitutional posts in the country. As Independence Day is around the corner, it is only fair to focus on the subject of "tolerance", and something which was stressed upon in the farewell speech of former President Pranab Mukherjee. Tolerance is ingrained in our nation and a look at its history shows that one can't think of a more tolerant nation in this world which took 100 years

to protest against an exploitative regime. Leaders of all religious hues worked together to achieve this goal. Perhaps we need to take a leaf out of their book and work towards promoting social tolerance; increasing incidents across the country show that it has started fraying.

**MANISH PANDEY,**  
Pune

### His final bolt

The surprise defeat of Usain Bolt in the 100m final at the IAAF World Championships in London proves that he too is human. Bolt may have missed out making it to the top in his last 100m race but his name is already etched in the record books. He will remain the finest sprinter the world has seen. UB, thank you for those memorable and enduring sporting moments.

**C.G. KURIAKOSE,**  
Kothamangalam, Kerala

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# Letting go of instant triple talaq

There are enough legal devices within India's dominant Hanafi school jurisprudence to invalidate it



A. FAIZUR RAHMAN

About two months ago, the All India Muslim Personal Law Board (AIMPLB), through its counsel Kapil Sibal, informed the Supreme Court that it was considering reforms and the gradual giving up of instant talaq but wanted time for it. One of the "reforms" mentioned was a circular from the board asking all qazis to advise the husbands, while finalising the marriage contract, not to resort to instant divorce (talaq-e-bid'a) unless under compelling circumstances. The "compelling circumstances", however, were not defined. This is not the first time the AIMPLB has tried to illude Muslim women with the talk of reforms. In July 2004, in its executive committee meeting in Kanpur, the board was widely expected to outlaw instant talaq. But nothing came of it. Muslim women were let down once again in May 2005 when the board's much-hyped "model nikahnama" released in Bhopal turned out to be a damp squib. All that it contained against talaq-e-bid'a was a casual, non-binding advice to the groom in Section 5 (vii) saying: "Jahan tak mumkin ho ek waqt mein teen talaq dene se bachna (to the extent possible, avoid pronouncing three divorces in one sitting)."

## Reasons for rigidity

This sort of dilly-dallying on reforms renders the assurances given by the AIMPLB to the Constitution Bench unreliable. But what makes the board so unyielding? The rigidity stems from two concepts namely *taqleed* (uncritical acceptance of a school) and *tamazhuh* (idealisation of a school) wherein precedence is given to one legal school (*mazhab*) over the rest.

The four major schools of Sunni law – Hanafi, Maliki, Shafi'i and Hanbali – differ from one another on the basis of the interpretive methodology they adopt to derive law from the Koran and the Prophet's sayings. And the belief that only the interpretation of their school is correct makes followers exalt the totality of juristic pronouncements of the school (the doctrine of *tamazhuh*). In *taqleed*, the adherents just follow their school



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uncritically even if they don't elevate it above others.

A subdued emphasis on *tamazhuh*, and an overt expression of *taqleed*, is clearly visible in the 30-page "Note on arguments of Mr. Kapil Sibal" submitted to the Supreme Court wherein the issue of instant talaq is reduced to a question of whether or not it is a part of the Hanafi faith because more than 90% of Indian Muslims are Hanafis.

Such an argument is unacceptable as it is based on the presumption that by mere accident of birth, Indian Muslims are forever obliged to follow the Hanafi *mazhab*. Nevertheless, the AIMPLB seems to have overlooked the fact that *tamazhuh* or *taqleed* cannot be easily invoked in the case of talaq-e-bid'a. In the aforementioned "Note", the board admits that Imam Abu Hanifa (d.767) "did not record his own understanding of what the Prophet said in writing"; however, his two disciples – Imam Abu Yusuf (d. 798) and Imam Muhammad (d. 805) – immediately upon his death recorded in writing what Imam Abu Hanifa had said about triple talaq.

In other words, Hanafi theologians do not possess any direct statement from the founder-jurist of the Hanafi school that upholds the validity of talaq-e-bid'a.

## Case for invalidation

If the definition of *tamazhuh* were to be stretched to also include the statements of Imam Abu Hanifa's students, as is being done now by the AIMPLB, would it indicate the inconceivability of reforming the Muslim personal law in India? Certainly not. There are enough reasons and legal devices within Hanafi jurisprudence to outlaw instant talaq.

wise prohibited by law. Jurists also had recourse to *takhayyur* (selecting the most suitable among available legal opinions in a given school of law) and *talfiq al mazaahib* (derivation of rules from material of various schools of Islamic law).

These instruments were utilised to give effect to the Islamic legal maxim "laa yunkar taghayyur al-ahkaam bi taghayyur al-zamaan wa al-ahwaal", which means "there is no denying that laws will change with the change of time and circumstances".

Therefore, if the AIMPLB is really serious about reforms, there are enough legal devices within the Hanafi denominational faith system to invalidate instant triple talaq.

## The way forward

For this to happen, the AIMPLB must be willing to reassess its *raison d'être* and model itself on Koranic universalism rather than legal conformism. It must be open to the idea of its certitudes being challenged, especially in the light of the fact that the founder of the Hanafi school, Imam Abu Hanifa, was himself a model of independent reasoning (*ijtihad*) and flexibility. He introduced the concept of *istihsan*, which helps jurists depart from the existing precedent by taking decisions different from those of similar cases, for reasons stronger than those obtained in the past cases.

Applying *istihsan*, and devices mentioned above, the AIMPLB can easily overhaul the legal methodology that validates talaq-e-bid'a and harmonise it with the intent of the Koran and Prophetic teachings. In pursuance of this, the board may immediately declare talaq-e-bid'a invalid as the first step towards reform. This, of course, entails a difficult shift from rigid *tamazhuh* and *taqleed* to adaptable *ijtihad*. But the benefits are huge.

It would open up Islam to modern interpretations within the framework of its original sources, and in the long run inculcate a sense of tolerance among Muslims for different points of view and equip them to respond positively to the requirements of a multicultural society like India. The question is: does AIMPLB realise the momentousness of giving up its obnoxious denominationalism?

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# Privacy in the digital age

It is troubling that for many, the right to privacy is against the state and not so much the digital corporations



PARMINDER JEET SINGH

The current focus on the right to privacy is based on some new realities of the digital age. Personal spaces and safeties that were previously granted simply by physical separation are no longer protected. The digital network enters the most proximate spaces and challenges the normally accepted notions of the private. It brings into focus new means of exercising social, economic, and political power, and reducing of autonomies.

Like in the physical space, the private and the public must be separated in the digital realm as well. We need a constitutional definition and guarantee of the right to individuality, personal autonomy and privacy in the digital age. It must be provided in the clearest terms by the Supreme Court, which is currently considering this issue.

## A positive right

Some arguments advanced by those seeking the right to privacy, however, are troubling. It seems that for many, the right is basically against the state, and not so much the digital corporations. One hears propositions such as: unlike corporations the state is a monopoly, corporations rely on private contracts for data access, providing data to them is voluntary, and so on.

A right is a substantive right only if it works in all situations, and for everyone. A right to free expression for an individual about her exploitation, for instance, is meaningless without actual availability of security that guarantees that private force cannot be used to thwart this right. The role of the state therefore is not just to abstain from preventing rightful free expression but also to actively ensure that private parties are not able to block it.

In the same manner, the role of the state in terms of the right to privacy in the digital age is not just to abstain from its violation. It is equally to ensure that private parties are not able to violate such a right. The court must specifically direct the state to ensure this imperative.

The elephant in the room in current privacy discussions is the status of data as the central social and economic resource in the digital age. Excluding the state from any substantial role with regard to society's data resources without similarly constraining private corporations will lead to a future where corporations become the key organ-

ising actors for society, relegating the state to an extremely truncated role. Such a situation is especially threatening to the interests of weaker sections of society that depend on the state for justice and redistribution.

The state must retain an important part in the organisation of new social and economic structures, which requires it to play a significant role in the data ecosystem. The public sector will, for instance, need to manage some infrastructural social and economic databases above which the private sector can run a competitive economy. Some of these will be in the form of "data commons", which will require a properly institutionalised stewardship of the state. Citizens will also require the assistance of a public interest agency to enable management of their personal data in a manner that they can obtain the best benefit of a data economy/society and its personalised services.



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## The role of the state

All such roles of the state must be constitutionally circumscribed, with strict laws. While establishing a right to privacy, the Supreme Court must also direct the state to develop appropriate institutions for shaping the state's role in a digital society/economy. This may require, at some stage, an independent branch of the state exclusively dealing with data issues and management.

Framing of a right to privacy must not curtail the state's due role in our collective digital futures. This will only ensure that global digital corporations become all-powerful economic, social and political actors. They already provide most of the digital services that appear to be of a public good nature, and in turn control and shape entire sectors.

The state must be directed by the Supreme Court to ensure that people's right to privacy is actually available against these corporations as well. In most contexts, there is nothing voluntary in checking an online box giving away one's privacy. A citizen must have options to undertake basic digital functions like emailing, information search, social networking, etc. without sacrificing her privacy rights. This too is the state's responsibility.

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## SINGLE FILE

# ASEAN, 50 years on

Its integration necessarily depends on deepening its democratic institutions

GARIMELLA SUBRAMANIAM



REUTERS

On the 50th anniversary of its founding today, the Association of South-east Asian Nations (ASEAN) can look back with optimism on its incremental record on regional integration. Noteworthy is the realistic move away from the original policy of non-

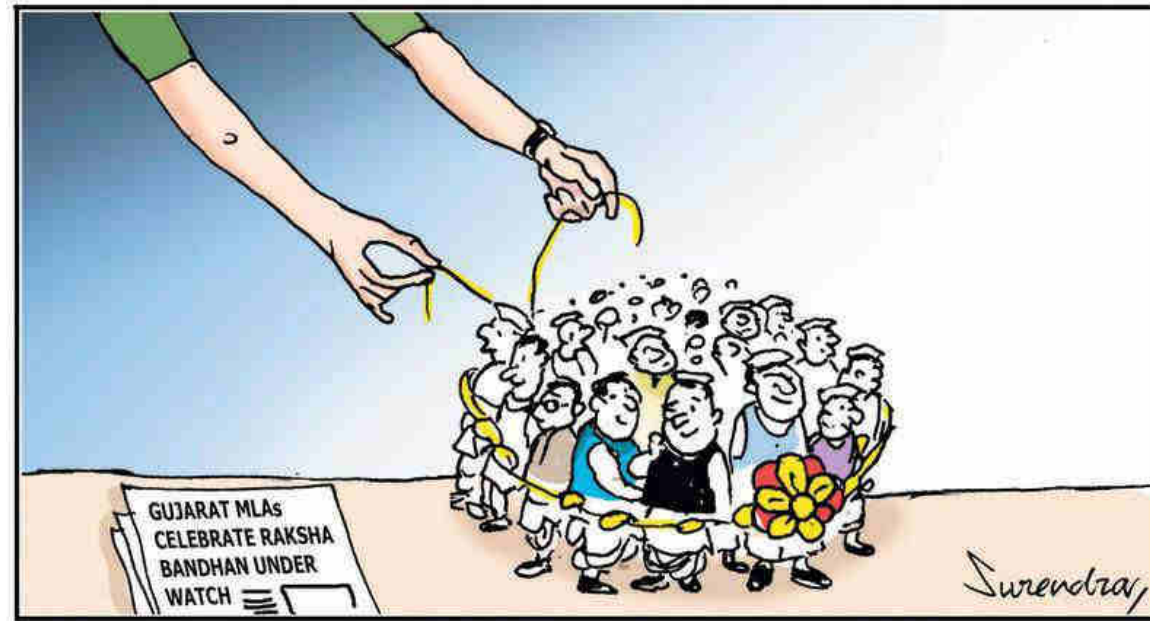
interference in the internal affairs of member states. Such caution may have been the pragmatic course to adopt during the 1960s, with a view to advance the larger common interest. After all, founder members Singapore and Malaysia had just concluded the former's independence agreement. Similarly, the conflict between Thailand and the Philippines had been barely resolved. But over the years, there has been growing appreciation that non-interference, if perceived as indifference, entails political cost, impeding more substantial engagement.

The assertion of the democratic will on the common institutional framework was in stark evidence in relation to developments in Myanmar. Opposition from the other ASEAN members against the country's oppressive military dictatorship forced Rangoon to forgo the body's annual chair in 2006. This move could prove critical, given the continued pre-eminence of the army elsewhere in the region. Moreover, there has been recognition that the bloc's expansion to cover ten countries, with highly diverse economic, political and cultural moorings, calls for a greater convergence of policies and more coordinated action. China and India's emergence as major economic powers has lent greater urgency to trade liberalisation.

## The EU versus ASEAN

Thus in 2007, ASEAN adopted a legal charter with a mandate to establish free movement of goods, services, capital and skilled personnel. With the 2015 launch of the ASEAN Economic Community, the bloc is on the threshold of realising its ambition of emerging as an integrated single market and to engage the rest of the world with a unified voice. A familiar refrain among commentators is that for all the lofty declarations issued during ASEAN annual summits, there is little tangible action on the ground in relation to reduction of tariffs, and intra-regional trade. Implicit in this narrative is impatience with the relatively slow pace of economic integration in the group, compared to the European Union. But then, to equate the trajectory of their respective evolution betrays a lack of a sense of history and context. Underpinning the European project was the post-World War II imperative of securing peace, prosperity and unity. There was a clear understanding that these objectives could only be accomplished through concrete mechanisms that rendered another war between France and Germany materially impossible. The result was the establishment of transnational bodies, with definite powers of oversight, by pooling sovereignty among nations.

Conversely, except Thailand, the other original constituents of ASEAN had just emerged from colonialism as newly independent nation states. Defending their sovereignty was bound to be a high priority for them during the Cold War, while their leaders were alive to the need to promote their collective security through a common framework. ASEAN's integration depends on deepening its democratic institutions.



Surendray

## CONCEPTUAL

### Sexy son hypothesis

BIOLOGY

This is a theory of mating preference which states that women tend to pick males with the genes to create attractive sons as their sexual partners. The rationale behind the hypothesis is that attractive male offspring possess the best chances of procreating and passing on the mother's genes to the next generation. It also implies that a man's ability to successfully provide for the mother and the offspring exerts only a secondary influence on mating outcomes. The hypothesis was proposed by British biologist Ronald Fisher in his 1930 book *The Genetical Theory of Natural Selection*.

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## ABSTRACT

### No need to nudge consumers

They do not need to be influenced to make the right decisions

PRASHANTH PERUMAL J.

Behavioural economists have enjoyed considerable popularity recently for their work on human irrationality. American economist Richard H. Thaler and legal scholar Cass R. Sunstein, joint authors of the popular 2008 book *Nudge*, have been at the forefront of this rise. Earlier, Israeli-American psychologists Daniel Kahneman and Amos N. Tversky made pioneering contributions to the field. According to these experts, human beings are far from rational when it comes to making choices as various biases lead them to make suboptimal choices that affect their well-being. This, experts believe, can be corrected by a benevolent government that quietly tinkers with the choices that individuals need to make each day.

A government that hopes to improve public health, for instance, might

decide to impose food safety and nutrition standards on businesses that sell food products to the public. This would hopefully save consumers, who supposedly would not otherwise be able to arrive at wise decisions, from the ill-effects of low-quality junk food. Similar "nudges" can be used in a variety of other circumstances as well, including to steer uninformed consumers away from making financial decisions that could harm them. "Nudging in an Evolving Marketplace: How Markets Improve their Own Choice Architecture", a 2016 paper by Adam C. Smith and Todd J. Zywicki, takes a critical view of the policy to nudge consumers towards their own good.

## The right choice

The authors argue that consumers do not need to be influenced to make the right decisions. This is not to say that consumers possess all the required in-

formation to make the right choices for themselves. Instead, the authors argue, even in the absence of a benevolent government, the marketplace evolves mechanisms to improve the choices available to consumers. For one, left to their own devices, consumers are likely to learn from their past mistakes to make better decisions in the future. Two, market competition forces businesses to offer better choices that make their customers happy. Three, there is a market for quality which is more responsive to the needs of the consumer than the government. This makes government nudges irrelevant.

Lastly, many choices that prima facie seem irrational to government officials and the general public might actually be rational from the point of view of the consumer. Smith and Zywicki offer a variety of examples to make their case.

## FROM The Hindu. ARCHIVES

FIFTY YEARS AGO AUGUST 8, 1967

### Chagla calls Bhutto "a psychological case"

The External Affairs Minister, Mr. M.C. Chagla, said in the Lok Sabha during question time to-day [August 7, New Delhi] that Mr. Bhutto, Pakistan's former Foreign Minister, was a "case of double loyalty" besides being that of "double-speak" and "doublethink." He was being assessed as "a psychological case." Mr. Chagla made these remarks in regard to Mr. Bhutto at the end of a 20-minute question and answer session on Mr. Bhutto's attempts between 1947 and 1958 to assert his Indian nationality with a view to retaining his properties in India and simultaneously to claim in Pakistan that country's nationality to secure compensation for his properties declared evacuee in India. Mr. Chagla told Mr. Hem Barua he did not think Mr. Bhutto would like to come back to India.

A HUNDRED YEARS AGO AUGUST 8, 1917

### M. Kerensky's appointment.

After consultation with the Socialist Ministers, M. Kerensky has decided to remain in office [in Russia]. The Cabinet majority is expected to be Radical and Socialist. M. Nekresoff, Vice-Premier, presided at the historic Conference which ended at six in the morning. M. Tereschenko, summing up the debate, said that the anxiety of all parties to reach an agreement guaranteed the safety of the country.

## DATA POINT

### A continuing legacy

The usage of India Post's 'money order' service has not come down drastically in the past decade despite leaps in banking and mobile wallet systems. Availability of more than 1.54 lakh outlets across the country and introduction of electronic, instant and mobile money order services have kept the business going

