



A new twist

The last-minute NEET exemption to Tamil Nadu will only lead to more litigation

Just when it appeared that this year's medical admissions in Tamil Nadu would be solely based on the National Eligibility-cum-Entrance Test (NEET) and that no further legal avenue was available to circumvent it, the Centre has added a new twist. It is now, according to Union Commerce Minister Nirmala Sitharaman, ready to cooperate with Tamil Nadu in its efforts to obtain a one-time exemption from NEET. Tamil Nadu, which abolished entrance tests for professional courses in 2006, fears that the introduction of NEET would jeopardise the admission prospects of rural students who cannot afford the extra coaching and higher workload that preparing for NEET entails. In its desperation to get around the NEET barrier, it passed two Bills seeking to preserve its existing system of admitting students to medical and dental courses based on Class 12 marks. However, the Centre, understandably reluctant to grant such exemption to one State alone, did not recommend presidential assent to these Bills. As admission season closed in, the State government decided to go by NEET rankings, but reserved 85% of seats for students passing out of its own school Board. The Madras High Court struck down this order. The Supreme Court dismissed the State government's appeal. With medical admissions already delayed by a month, one would have thought the State government would see the writing on the wall and move ahead with the admission based on NEET. But its efforts were unrelenting. What it could not achieve legally, it seems to have achieved politically, albeit for just one year.

This belated move is bound to spawn further litigation and encourage similar demands elsewhere. The eleventh-hour change in the basis for admission will cause heartburn to students who have cleared NEET, a demanding test. There is no denying that the exemption will please many students, but if the Centre was ready to grant a one-time exemption, it ought to have done so much earlier and not now. The argument all along was that it did not want to treat one State alone differently; nothing was done to allay the impression that the test was being thrust on an unwilling State. Now, there is a sudden realisation that Tamil Nadu's situation is unique. It is difficult to miss the political messaging given that it was Ms. Sitharaman, a minister involved in her party's affairs in Tamil Nadu, who made the announcement, and not the Health Minister. If the exemption is stayed by the courts, another set of students and parents will once again feel short-changed. In any case, the State government is only postponing the inevitable, as upgrading academic standards in its own schools and preparing students for future challenges are unavoidable imperatives.

A hasty order

SEBI's order against suspect companies smacks of heavy-handed justice

The order of the Securities and Exchange Board of India imposing trading restrictions on 331 companies suspected of being shell entities is an example of rash regulatory action. The Securities Appellate Tribunal has since rightly ordered the lifting of the trading restrictions imposed on two of the companies that approached it, namely J Kumar InfraProjects and Prakash Industries. In fact, the tribunal stated in its order that "it is apparent that SEBI passed the impugned order without any investigation." Interestingly, the regulatory body had acted on a list of suspect companies that the Ministry of Corporate Affairs had forwarded after consultation with the Serious Fraud Investigation Office and the Income Tax department. Instead of conducting an independent investigation into these suspect companies, SEBI passed the buck to the exchanges and asked them to impose immediate trading restrictions on the companies. Before a proper investigation by SEBI or the exchanges, the companies were put under stage four of the Graded Surveillance Measure, whereby trading is limited to one day a month, the trading price is capped, and buyers are required to deposit money. It is suspected that trading on the shares of these "shell" companies was used as a way to launder black money. In fact, 169 out of the total list of 331 companies had already been suspended from trading before the order. But on the list were also companies with huge market capitalisations, and it is reasonable to assume that the predominant share of trading on any given day is legitimate.

An interesting unknown, meanwhile, is the basis on which the MCA prepared the list of suspect companies that was forwarded to SEBI. The government's resolve to act against dodgy companies, for the sake of bringing business practices under the purview of the law, is indeed warranted. According to Finance Minister Arun Jaitley, since demonetisation the Centre deregistered well over 1,60,000 dormant companies until early July. It has also identified over 37,000 shell firms and 3,00,000 firms engaged in suspicious dealings, according to Prime Minister Narendra Modi. At the same time, a sound business environment also requires that the government adhere to the basic rules of justice at all times. Handing out extremely harsh punishment on suspect companies without giving them an adequate chance to explain their positions smacks of heavy-handedness. The economic costs of freezing the trading of shares of popular companies are not commensurate with the purported benefits of such action. While the SAT order has brought some fairness to the entire proceedings, SEBI's action will deal a blow to its credibility among investors as being an effective and unbiased regulatory body. Not surprisingly, investor unease was at least partially evident on the street where stocks witnessed a sharp fall after the order. In order to restore confidence, SEBI and the government must explain the rationale behind their actions.

Partition or Independence?

The horror of Partition is gradually coming to displace the idea of freedom. This carries immense dangers



FAISAL DEVIJI

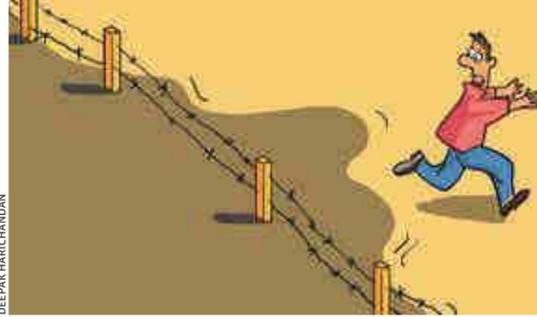
Something insidious has been happening to our commemorations of Independence over the last two decades or so. It seems as if the horror of Partition is gradually coming to displace the idea of freedom and dominate our annual reflections on the momentous events of August 1947. How did this shift occur, and what are its implications?

In their early decades as independent states, India and Pakistan both sought to play down and even forget the violence of Partition, which is of course one way in which trauma manifests itself. But their response was also a strategic one, since the leaders of both nations realised that any official recognition of these brutal events would not only detract from the achievement of freedom, but also ran the risk of imperilling the religious minorities who might be held responsible for it.

Without a single monument to mark it, Partition was for many years remembered only by two kinds of groups, religious ones on the far right which viewed the new states as being soft on belligerent minorities loyal to foreign powers, and those on the far left who saw them as agents of a bourgeoisie loyal to international capitalism. Despite their vehement opposition to one another, it is striking how much these two movements shared in their more or less conspiratorial visions of history.

Virtue in forgetting

Of course Partition had been a world historical event immense in its destructive force, and so it is only right to remember it. Yet forgetting is also a crucial virtue, both in moral and political terms, because when paired with justice and forgiveness it is the only thing that stitches together societies divided by violence. As Gandhi had always said, European ideas of history, and the national, communal and other identities based upon it, could only produce violence either



DEEPAK HARICHANDAN

in attempts to recover past glories or out of resentment at present conditions.

While Indian and Pakistani leaders in the period immediately following Independence might not have been so interested in justice and forgiveness, they understood the importance of forgetting, and knew that to link their countries' freedom with violence was a dangerous thing, if only for their own political futures. Not only could it delegitimise independence and threaten civil strife, but make for an embittered and properly hysterical nationalism playing into the hands of their opponents on the right and left.

Unfinished business

The first breach in this wall of silence came neither in India nor Pakistan, and didn't even have Partition as its subject. It took the emergence of Bangladesh in 1971 out of a genocidal civil war to change the script of independence in the region. Apart from the brutality of its birth, Bangladesh was created at a time when genocide and crimes against humanity had become viable legal categories internationally. Bangladeshi nationalism was thus defined by these figures of horror, but having been unable to hold Pakistan or its army culpable for their crimes, its founders and their political heirs have increasingly focussed on searching out traitors and collaborators from within. Whatever the justice of this enterprise, it has produced a violent and vengeful national culture unable to move beyond the trauma of its creation.

When a history of violence overshadows ideas of freedom, the latter can either be sacrificed in its

name or remain undeveloped, as seems to be the case in Bangladesh, probably South Asia's most authoritarian state today. Whereas 1947 is a meaningless number for Bangladeshis, despite the immense brutality it entailed for Hindus in the erstwhile East Pakistan, in India its violence became the subject of commentary and reflection only in the 1980s. This happened following the Punjab insurgency, when it became clear that a great deal of unfinished business remained from Partition.

It was from this period that the formerly subtle and discreet references to Partition in art, cinema and literature were transformed into academic studies and other, rather too obvious, invocations of freedom's violence. Unlike the right and left-wing emphasis on assigning responsibility for such violence to internal enemies, the liberal discovery of Partition entailed blaming both sides to acknowledge their common inhumanity and by that token humanity also. As with the nationalists of old, the British could also be held responsible if required, and while they certainly deserved blame, such a move was meant only to exculpate one or another Indian group from it.

In Pakistan, always late to the game, Partition has only become a publicly debated issue quite recently. For unlike India, where independence had always been a mixed blessing, given not its violence so much as the loss of territory involved, in Pakistan it had signalled unalloyed victory following a brave struggle. To reflect on the violence of Partition in Pakistan, then, is to question the very legitimacy of the state, even without belonging to the right or left politi-

ally as much as ideologically. But have these recoveries of the region's violent history, interestingly originating in the two partitioned provinces of British India, given us a clearer idea of freedom or further obscured it?

Failure of communalism

I would like to suggest that however necessary it might be, the focus on Partition and its violence has obscured our ideas of freedom, whether of the historical or utopian kind. Both scholarly and amateur explorations of Partition these days, especially those relying upon oral history, have come to displace traditional narratives about apportioning responsibility with more nuanced discussions of everyday life in 1947. Fascinating though they are, such stories stray even further from any inquiry into the idea of freedom. Indeed they tend to reinforce long-standing accounts about communal or religious loyalties trumping nationalist ones at a time when the social and political order had broken down.

But did Partition in fact mark the triumph of communal loyalties, if not outright hatreds? While historians and others have emphasised the undeniable importance of such violence, sometimes mitigated by the malignant role of the colonial state or 'secular' parties and politicians, they have for the most part ignored the fundamental betrayal of religious allegiances that provided their context. For rather than demonstrating the power of communal loyalties, India's partition illustrated their massive betrayal, as Hindus and Muslims willingly abandoned their coreligionists in both countries.

Those like Gandhi and Jinnah who had relied upon such communal allegiances, not simply inter-religious ones, to hold the country together and force more negotiations were astounded to see how easily they unravelled. It was not trust in the other country that allowed Indian and Pakistani leaders to agree to Partition, but at the very least the famous 'hostage' theory, whereby a Hindu or Muslim minority in one country was thought to guarantee the good treatment of its fellows in the other. And yet despite all claims to the contrary, majorities in either state were happy to endanger their core-

ligionists in the other. And they continue to do so into the present.

Perhaps the real trauma of Partition has little if anything to do with the egregious violence among Hindus, Muslims and Sikhs. After all, this can now be spoken of so easily as to belie the existence of any traumatic kernel in such narratives. Instead it is the still unspeakable memory and reality of betrayal, of treachery against one's own religious community, which might inspire the rage of Partition in its own time as well as in our own. This was already clear in a number of difficult conversations Gandhi had with refugees from Pakistan, and from literary and anecdotal evidence is certainly true of those who left India as well.

This means that the problem posed by Partition is not merely or even primarily a Hindu-Muslim-Sikh one, but instead something that needs to be addressed by each group internally if it is to achieve any resolution. At the moment such treachery is projected onto religious minorities in both countries.

As far as Indo-Pakistani relations are concerned, Gandhi was surely right in saying that no peace between the two was possible until all those who had been driven away were given rights to return and compensated for their losses of life and property by some form of contrition and restitution, incomplete as it would necessarily be.

And yet this betrayal was problematic not because it happened, but did so in such an incomplete way. For it has always been the un-concern of their citizens for each other that has kept India and Pakistan united. In other countries, insurgencies and indeed provincial civil wars in places like Balochistan or Punjab would have led to their fragmentation. But in South Asia, all this can happen in one province while others enjoy peaceable lives. Maybe it is the imperial rather than national character of these diverse societies that keeps them together, the mutual relations of citizens defined neither by love nor hatred but indifference. The quest for cultural or religious unity and the hunt for traitors will only put this unity at risk.

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A great divide

There is a contrast between the status of women and their political presence, as Nagaland and Haryana show



RADHIKA KUMAR

The incidents of protests and violence by tribal bodies in Nagaland earlier this year over 33% reservations for women in urban local bodies have once again highlighted the issue of women and representation.

In this context, it is interesting to look at the case of Haryana which conducted elections to rural panchayat bodies in January last year. The State amended the State Panchayati Raj Act, even including criteria such as educational qualifications and standards for candidates to meet while seeking election to panchayat bodies. Academically, men from the general category had to be matriculates, women and Scheduled Caste (SC) candidates had to have passed out of middle school, while SC women should have passed standard five. This raised criticism as it disqualified

68% of SC women and 41% of SC men. But quite interestingly, women's representation increased to an average of 42% across all levels in comparison to 36% in the fourth panchayat election held in 2010.

Decoding the data

Along caste categories, State Election Commission (EC) data show that SC women panches were 32.81% in comparison to women from the Backward Classes (BC) category who constituted 27.49% of elected women panches. In fact SC women have higher representation than BC women at all levels of local governance except for the office of the sarpanch wherein the difference is 2.41% in favour of BC women when calculated as a percentage of the total number of elected women sarpanches. Also, 9.24% of the total seats in panchayat elections were reserved for BCs (both men and women), while 10.87% were for SC women. Therefore, reservation for SC women did bolster their numbers, enabling them to overtake BC women representatives.

The second development with regard to the category of gender is



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that the representation of SC women exceeds that of SC men among the panches at the village level and among members of the zilla parishad. This is again heartening given that reservation for SC women as a total of SC reservations for panchayat members' at all three levels was 48%, while for SC men it was 52%. Primary research makes it clear that the spurt in women's representation was not by design but by default. A newly elected woman panch from a Jat-dominated village in Ballabgarh block in Faridabad district said that she had heard of her nomination after it was announced by the locals and when she was not present in the meeting. Her nomination was a

result of the new criteria introduced in the amended Panchayati Raj Act of Haryana. An amendment to the Act resulted in her husband being disqualified from contesting as he had a criminal case pending against him while her son was ineligible being a minor. In a bid to retain the panch seat among her community that is concentrated in a particular area of the village, it was decided to nominate her instead of her husband. Therefore, she was a consensus candidate.

West to east

Data from the Haryana EC website shows that 42.3% women candidates at the level of the village panch were elected unopposed. Women campaigned actively in the panchayat elections. Women nominees also participated in village rallies and sought electoral support. Most election posters used pictures of both the woman candidate and a male relative. Scaling up the analysis to the level of the Legislative Assembly, Haryana has the interesting distinction of electing the highest percentage of women representatives among all States, namely 14.44% or 13 out of the 90

Members of the Legislative Assembly (MLAs). On the other hand, there is no woman MLA in Nagaland. Yet, in terms of sex ratio and female literacy, Nagaland scores over Haryana. According to the 2011 census, female literacy in Nagaland was 76.69% as against 66.77% in Haryana. The sex ratio in Nagaland was 931 women per 1,000 men as against 879 women per 1,000 men in Haryana, which is the second lowest in the country. Clearly, there is a disconnect between the low social status of women in Haryana and the comparatively higher political presence that they enjoy in representative bodies. The more vexing question is the case of Nagaland, wherein women have formal agency in terms of literacy and numbers but lack a democratic voice as political representatives and decision makers. The question that one must then ask is this: Can democratic rights and representation be traded off for tradition and the promise of development?

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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.

For an overhaul

The bitter reality is that while we pat ourselves on the back for being one of the fastest growing economies of the world that has taken giant strides in science and even carved a niche for itself in the global corporate world, what eclipses these achievements are our dismal social parameters, especially our health indices. Exemplifying this fact is that no remedial measures have been adopted despite Japanese encephalitis claiming more than 10,000 lives in Uttar Pradesh between 1978 and 2005. This abject apathy towards life is inexcusable (Editorial - "Wages of neglect", August 14). Though the Centre has cleared the long-awaited National Health Policy 2017 which promises health-care services to all Indian citizens, particularly the underprivileged, the figure

of 2.5% of GDP spending is still a paltry sum and inadequate to meet the requirements of a country such as India. Augmenting investment in public health care with appropriate utilisation management is pivotal to sustaining India's growth. In lieu of focussing on issues such as 'Gau Rakshak', the need is for Centre and States to focus on 'Shishu Rakshak'. Remedial measures such as mosquito eradication while simultaneously embarking on a vaccination drive will help matters.

NALINI VIJAYARAGHAVAN, Thiruvananthapuram

It has become a dubious norm for all the Opposition parties, without exception, to fish in troubled waters in times of crisis. How many among the Opposition could have looked into the welfare of affected children before they lost their lives or had a

word of solace for their parents? In contrast, when a calamity strikes in the West, the Opposition works in tandem with the government and ensures that succour is extended to the needy. We need to be more humane and civil when catastrophes strike.

PUSHPA SARAN, Chennai

The death of many children in a place which has elected the Chief Minister of a State speaks volumes of how insensitive and callous politicians, bureaucrats, ministers and doctors have become in their attitude towards the most vulnerable in society. It was a historic moment when Railway Minister Lal Bahadur Shastri resigned owning moral responsibility for a train accident at Ariyalur in Tamil Nadu in November 1956. The Prime Minister's

exhortation of Swachh Bharat has fallen on deaf ears. In all this, one is reminded of the Camus novel, *The Plague*. In Tamil Nadu, the situation is not different. Dengue fever has been raising its ugly head while the State's politicians are fully engaged in their internecine quarrels.

M. VATHAPURESWARAN, Madurai

Poor sanitation, pathetic health-care systems, inadequate public awareness campaigns and apathy of the government and the municipality are what result in the spread of the tropical diseases every year. The stakeholders concerned must also stop adding political colour to the tragedy. The adoption of proper sanitation measures through public awareness campaign, scientific waste management techniques, penalty for offenders

responsible for water stagnation, regular fumigation and constant monitoring at all hospitals, public or private, should be the priority of the government.

SHREYANS JAIN, New Delhi

Final lap

The unfinished is sometimes unforgettable. It was sad to see the legendary Bolt reduced to tears and in deep pain in his final appearance on a track which he had

consistently burnt at a scorching pace. There was no trademark Bolt side-on victory stand, both arms stretched diagonally. It was pathetic to see his relay teammates Yohan Blake, Julian Forte, and Omar MacLeod lifting up the fallen Bolt. However, "his name will always live on" (Sport - "Bolt, Farah farewell party falls flat", August 14).

C.V. VENUGOPALAN, Palakkad

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CORRECTIONS & CLARIFICATIONS:

A sentence in "Miles covered, miles to go" (Non Fiction, August 13, 2017) read: "But this book commemorating the 25 years of economic reforms is not focussed on those juxtapositions." It should have been *commemorating*.

In the story headlined "A Battle and a betrayal" (Magazine, August 13, 2017) there was a reference to a ten-day march to Myanmar. It should have been *Rangoon*.

It is the policy of The Hindu to correct significant errors as soon as possible. Please specify the edition (place of publication), date and page. The Readers' Editor's office can be contacted by Telephone: +91-44-28418297/28576300 (11 a.m. to 5 p.m., Monday to Friday); Fax: +91-44-28552963; E-mail: readerseditor@thehindu.co.in; Mail: Readers' Editor, The Hindu, Kastur Buildings, 859 & 860 Anna Salai, Chennai 600 002, India. All communication must carry the full postal address and telephone number. No personal visits. The Terms of Reference for the Readers' Editor are on www.thehindu.com

An overhaul at seventy

We must choose national security as our overriding priority to sustain our position in a troubled world



K. SHANKAR BAJPAI

After 70 years, how capable have we made ourselves to handle our nation's challenges? One needs an apparatus for arousing awareness of what requires attention, for deciding what ought to be done, and the instruments for doing it. We have run down dangerously in all these respects. A handful of people at the top, elected or professional, are keeping our country going somehow, but the machinery for attending to our affairs is simply inadequate.

Governments everywhere nowadays find existing institutions and processes unable to cope with people's needs, much less their expectations or the complexity of modern problems. Democracies face the greater difficulty that their very essence, the concepts, ideas and practices that engendered and developed democracy, are shaken and endangered. Looking at the world's oldest today is enough to justify worries about all, not least our own.

Old civilisation, new battles

India is an exceptional state, inevitably with exceptional problems. Never in history have so many diversities – and in such huge numbers – constituted that self-governing system called a democracy. For nearly seven decades, the theory of a plural society obtained obeisance, not always practised or believed in, but somehow bowed to, howsoever perfunctorily. It is no longer being attempted, with consequences yet unknown.

One statistical fact reflects our greatest change: in our first elections (1951-52), our electorate was 173 million, the turnout was 110 million; last time (2014) 815 million could vote, 540 million did. Numbers apart, today's Indians are not the same in what or how they think, in what matters to them. Howsoever everlasting Eternal India's culture, its putative heirs behave very differently now than at Independence. Two current manifestations hardly fit our traditions: violence and intolerance. Perhaps we are more prone to violence than supposed: Gandhiji called off his civil disobedience movement because we erupted. But we used to live



"Whether in organising appropriate weapons supply or developing our internal infrastructure, our defence situation suffers from amateurishness and neglect." Indian Army soldiers carry arms and ammunition south of Jammu • AP

far more on the basis of Reason: rigorous, methodical, sedulous argumentation used to shape our thought, without our being dogmatic about it – ours is perhaps the only country with a religion believing there are other ways to God. Such a cast of mind leads to a live-and-let-live acceptance of diversity essential to our unique nationhood. Is it operative now?

When his first atomic explosion succeeded, Robert Oppenheimer famously quoted the Vedas. When I asked what made him interested in them, he answered; "Your ancestors asked the right questions, which we scientists are still struggling with." That intellectual curiosity, that search for knowledge, for meanings, for all the other truths leading to the Ultimate, drove us to our initial heights. To imagine we are still on those heights, to ignore the expansion and modification of knowledge, to ignore experience, is dangerous folly. We are emerging from a long period of backwardness, when we lost the qualities that had first made us great, and had succumbed to newer, more efficient forces. We will get nowhere by fighting yesterday's battles all over again – and that too in yesterday's ways. As the Victorian novelist-poet George Meredith wrote, "In tragic life, no villain need be... We are betrayed by what is false within."

Using changes in knowledge to change beliefs and practices is what enables people, societies, nations to

improve their conditions and circumstances. Leaving aside the endless debate on modernity-versus-tradition, modernity here means simply this readiness to benefit from additions and corrections to existing knowledge rather than suffer from the outdated. Where would we all be if orthodoxy insisted the world is flat? Consider our own history: we keep blaming colonialism for various deficiencies, without asking why we were outplayed by a few adventurers because we wallowed in careless obsolescence, whereas they used discipline, training, organisation, new weapons and methods – i.e., modernity. What have we learned?

Focussing on national priorities

Till the 1980s, China and India hardly differed in various economic parameters or the pace of progress. In our present tensions, comparisons are particularly unwelcome, but we must understand the crucial importance of the lesson they learned and we reject: 'Never Again.' India actually suffered foreign humiliation far more extensively, and directly, but the determination 'Never Again' galvanised China into modernity. They adamantly aim to outdo others in all fields. We Indians blame the distractions of democracy but there is a deeper fault: there is no thinking-out of vital priorities, no acceptance of modern ways. Yes, winning State elections, consolidating central power, democratic politics inescap-

ably consume energies at the cost of national priorities, but what distinguishes serious states from Third World frivolousness is the attention to national needs. Unless the key priorities are attended to, what kind of nation will remain to play politics in?

Building up state power to establish and sustain our position in a troubled and troublesome world should long have been our topmost priority. How many in governmental circles, leave alone the country, even realise what that involves? French Premier Pierre Mendes-France observed: "To govern is to choose." How do you govern a country if it chooses rebuilding temples as its leading objective?

Defence situation

Late though it is, we must choose national security as our overriding priority. Whether in organising appropriate weapons supply, developing our internal infrastructure or in ensuring effective management, our defence situation suffers from cumulative amateurishness and neglect. How our Defence Ministry has been operating almost from the beginning staggers belief. Indeed, our entire administrative machinery has become so dysfunctional, one despairs of reform. While the considerations that go into decision-making hardly measure up to the issues, the instruments of implementation simply don't work. Overhauling this machinery is surely the sine qua non for our survival, leave alone our progress.

We may prefer blind eyes, but others see all this too clearly, not least the two neighbours with major claims on our territory. We increase their opportunities for mischief while limiting our own options by disregarding our failings. How you appear to others shapes their approach: being seen as a state strong, knowing what to do and equipped to do it, exerts an innate deterrence; look sloppy, ill-prepared and problem-ridden, you are bound to encourage aggressiveness. Our government came to power arousing expectations of firm, effective governance. It looks like having a long run ahead, with the only possible national challenger bent on suicide and State leaders ever more parochial. The greatness of India they proclaim will only be possible if we put our house in order to suit modern times.

K. Shankar Bajpai is a former Ambassador to Pakistan, China and the U.S. and Secretary, External Affairs

The child's right to dignity

Neither is all sexual contact with children rape nor should there be a blind exemption to sexual violence within marriage



SWAGATA RAHA & SHRADDHA CHAUDHARY

Recently, a two-judge Bench of the Supreme Court heard a petition on the constitutionality of the marital rape exception in the IPC (Exception 2 to Section 375). The petitioners pointed to the contradictions between the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), which defines "child" as a person below 18 years, and the marital rape exception in the IPC, which states that sexual intercourse between a man and his wife (who is not under 15 years) is not rape. The Bench apparently inquired whether the court must intervene to provide protection to married girls between 15 and 18 years from sexual exploitation by their spouse, given the legislative intention to exempt marital rape from prosecution.

The technicality is easily answered because the POCSO Act does not carve out any exception in favour of marriage. The legislative intention is also evident from Section 42A of the POCSO Act, which provides that in case of inconsistency with the provisions of any other law, the POCSO Act will override.

Disjunction between law and reality

The marital rape exception under the IPC has not prevented the police from registering cases under the POCSO Act when the victim is above 15 years and is married to the accused. Studies by the Centre for Child and the Law at the National Law School of India University, Bengaluru have revealed that the victim was married to the accused before or during trial in 19% of the cases in Delhi, 8% in Assam, and 6% in Maharashtra. The percentage of cases in which the victim was in a "romantic relationship" with the accused, including marriage, stood at 29% in Delhi, 20% in Assam, and 21% in Maharashtra. In almost all the cases, the special courts acquitted the husband or boyfriend because the victim turned hostile, or her age was not proved, or she stated that the marriage was consensual.

The higher judiciary has largely taken a lenient approach in such cases. The Gujarat High Court in *Yunusbai Shaikh v. State of Gujarat* (2015) quashed the FIR against the accused under the IPC and POCSO holding, "[the victim] is admitting... that she had accompanied the applicant on her own free will and... since she was in love with the applicant and the applicant also loved her, they decided to get married." It added, however, that proceedings under the Prohibition of Child Marriage Act, 2006 (PCMA) should be initiated against the person(s) who performed the *nikah*, since the PCMA being

'special law' would override 'general' personal laws. The Gauhati High Court in *Jahirul Maulana v. State of Assam* (2016) quashed the chargesheet against a man who had allegedly raped a minor. Since the victim was his wife and had borne his child, the court felt that to continue criminal proceedings would defeat the ends of justice. However, the Karnataka High Court faced a case (*Soni Nihal v. Sri. Sandeep Patel*, 2017) with nearly identical facts and observed that the "criminal proceedings initiated for the alleged offence [rape] cannot be quashed."

Acquittals are the norm as Section 42A of the POCSO Act is not aligned with the social reality of normal sexual exploration among teenagers and the belief about the sanctity of marriage held by most judges, prosecutors, and the police. A few Delhi judges held that a strict interpretation would interfere with the autonomy of teenagers. Many special courts felt the parties were married, and it would be unfair to punish the man for what appeared to be a consensual relationship.



The POCSO's approach fails to recognise the autonomy and evolving capacity of children, particularly adolescents. Parliament and the Supreme Court need to consider the South African Constitutional Court's conclusions in *Teddy Bear Clinic for Abused Children v. Minister of Justice and Constitutional Development* (2013), in which provisions that criminalised consensual sexual conduct of adolescents between 12 and 16 years were held unconstitutional. At the same time, the government and courts cannot be oblivious to sexual violence within personal relationships. CCL studies show that courts do not consider whether the minor consented freely, or the child was groomed by the accused, or whether the marriage was forced.

Demands for strict construction of all sexual contact with children as rape and the blind exemption accorded to sexual violence within marriage are both incompatible with the constitutional guarantee of a right to life of dignity and protection against violence. An acceptable exception would only be one that is premised on respect for adolescent children's right to physical integrity and freedom of expression with safeguards against grooming, force, coercion, and exploitation.

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SINGLE FILE

Feared and feted

The Rwandan President's record is a mismatch between growth and persecution

GARIMELLA SUBRAMANIAM



The record of Rwanda's President Paul Kagame, elected recently for a third consecutive seven-year term, is a mismatch of prosperity and persecution. The combination underpins the dangerous, if familiar, assumption that economic growth and an efficient administration are a fair trade-off for the democratic rule of law and free expression of dissent. A former guerrilla leader of the Rwandan Patriotic Front (RPF), Mr. Kagame is credited with the restoration of peace and security after the 1994 genocidal killings of some 8,00,000 ethnic Tutsis and their Hutu sympathisers.

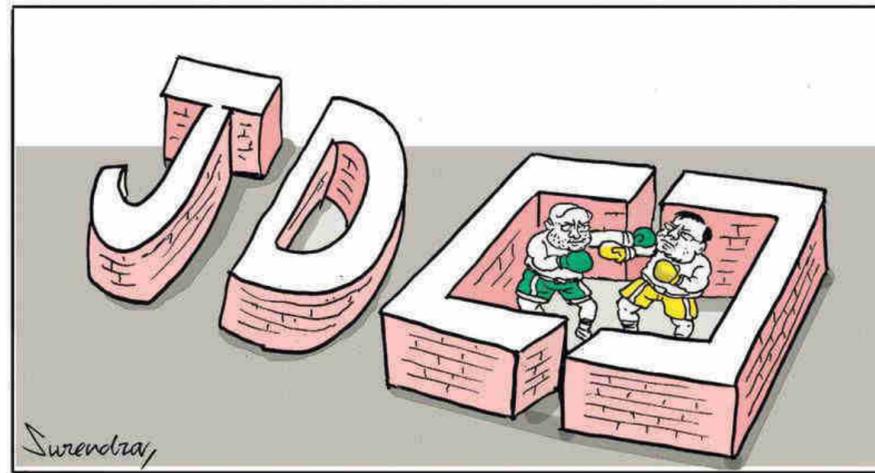
But in the years since, his past military instincts seem to have got the better of Mr. Kagame. Multi-party elections held periodically since 2003 have been all but a near monopoly of the RPF. Many of the regime's dissenters are either in exile or face constant threats. The meticulous planning that goes into the country's feted infrastructure development may be evidence of a rational approach to nation building. The absence of street-level corruption likewise may imply a firmness of purpose. But the attempt to foster reconciliation between the majority Hutu and the minority Tutsi communities seems to betray the same impatience for results. In the years after the massacres, perpetrators and victims were told to affirm a Rwandan identity rather than remember their particular ethnicity. To emphasise one or the other was frowned upon as "divisionism". Such quick fixes could be a case of social engineering carried to a clinical extreme with potential risks.

On the external front, Mr. Kagame seldom ceased to leverage the moral guilt among donor nations on their failure to intervene in the genocide and subsequent humanitarian relief and refugee crises in neighbouring Congo. For their part, western countries began to count on Rwanda's strongman as a shining light of human development thanks to the comprehensive socio-economic transformation he spearheaded. "Impressive but repressive," was a familiar refrain among the aid and business communities about his authoritarian ways.

Impulse for self-perpetuation

Rwanda has registered average annual growth figures of 5% for over a decade. The country also jumped many notches up the World Bank's 'ease of doing business' index. The proportion of women represented in Parliament is said to be one of the highest in the world. Mr. Kagame was also nominated to the UN Millennium Development Goals Advocacy Group by Ban Ki-moon. These achievements should be enough for the man to rank among Africa's finest leaders. But the impulse for self-perpetuation rather than a place in history has apparently influenced the President's actions in recent years. He accordingly ensured the prolongation of his rule, through a 2015 constitutional amendment, to allow him to run for three more terms, subsequently ratified in a popular referendum.

His victory this August is only the first of them. His tinkering with the Constitution as well as his politics of fear have drawn widespread international condemnation. Also, there are concerns regarding Rwanda's democratic future in view of the entrenched one-man rule and fear of a Hutu reprisal.



CONCEPTUAL

Loan to value ratio

FINANCE

This is a metric used to assess the level of risk involved in extending a loan to a borrower by comparing the value of the loan against the value of the underlying collateral. The loan to value (LTV) ratio is calculated by dividing the loan amount by the estimated market value of the collateral. It is usually expressed in percentage terms, and shows the amount of money that can be salvaged from a borrower in case of a default. Since the actual market value of the collateral is likely to fluctuate over time, loans with lower LTV ratio are considered safer as the lender is protected from larger fluctuations in collateral value.

MORE ON THE WEB

Google fired Damore for sexism, but we need science over bias

<http://bit.ly/googlegendergap>

ABSTRACT

In pursuit of power

Good men are likely to lose out in the race for power

PRASHANTH PERUMAL J.

After any human disaster caused by people who wield political power, there is almost always a bunch of utopian dreamers who argue that the disaster could have been avoided if only good people held such power. Power, if held by good people with good intentions, can lead to good things for all, they say. Many former supporters of the socialist regime in Venezuela, for instance, argue that socialism failed to work in the country only because it was hijacked by power-hungry people. If not for these greedy people, they say, socialism would have worked in the erstwhile Soviet Union and China as well.

Very little thought, however, goes into why it is often the worst among men who get to occupy charge of positions of power and misuse it. In

fact, most good and decent men who wish to do good for others try to avoid rather than embrace positions of power.

"Dishonesty and Selection into Public Service: Evidence from India", a 2017 paper by Rema Hanna and Shing-Yi Wang published in the *American Economic Journal*, provides evidence that it is indeed the worst among people who get attracted to power. The authors find that students "who cheat on a simple laboratory task are more likely to prefer public sector jobs". They further argue that cheating on the task they study predicts future corruption among civil servants.

So what is it about power that tends to attract towards it the worst among all people?

For one, since power involves the use of coercive force, rather than peaceful and voluntary interaction, it tends to at-

tract people who have a preference for bullying others into submission. In fact, Hanna and Wang in their study find that students with pro-social preferences were "less likely to prefer government jobs". People with anti-social preferences, of course, are less likely to use their coercive powers for the good of society either.

Typically, one could still argue that good people when given coercive powers can nevertheless use it towards achieving the good of society. But, as public choice economists would argue, such good men are quite likely to lose out to the bad ones in the race for power. This is because while the good people may fight for power to do good for society, bad people pursue power to do good for themselves, which in turn makes them more ruthless in their pursuit of power.

FROM THE HINDU ARCHIVES

FIFTY YEARS AGO AUGUST 15, 1967

Foreseeing breakthrough in agriculture

"We are it seems to me, poised for a major breakthrough in the matter of agricultural production" said President Zakir Hussain, in a broadcast to the nation to-night [August 14, NEW DELHI], on the eve of Independence Day. The President said the problem hitherto had been to persuade the farmers to adopt new techniques but now a deep psychological change had come about and it was the farmer who were pressing for the provision of greater and more up-to-date facilities. Dr. Hussain recounted in detail the country's progress since independence 20 years ago and expressed optimism for the future. "The investments we have made in our economy are about to yield their full results and soon. In ten years or perhaps even in five, I am sure we shall see our country as the centre of a great economic change which will have its impact not only on our own 500 millions, but on the whole of Asia and Africa," he said.

A HUNDRED YEARS AGO AUGUST 15, 1917

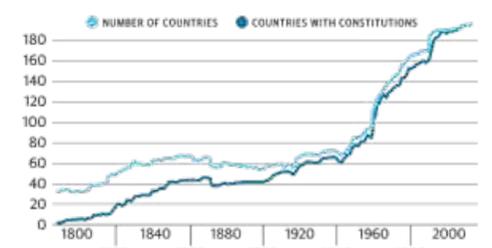
The Railway Strike.

There has been no improvement in the G.I.P. Railway workshop strike situation [in Mumbai]. To-day [August 14], the Agent, in a notice to the strikers, recapitulates various increases in the grades of wages recently announced and concludes with a warning that the Company is obliged to consider means of carrying on work in their shops by other sources and necessary steps are now being taken to do this. The notice adds: Unless the workmen return at once re-engagement could not be guaranteed and anyone who did not return by Friday at the latest would be considered dismissed and the portion of his holdings in the provident fund representing contributions plus interest would be forfeited. The strikers had been trying to molest those who have given in, but so far nothing serious is reported. The relief committee, as usual, distributed rice, dholl, etc., and is arranging for discharge of men's rent bills.

DATA POINT

Constitutions of nations

In 2015, almost every nation state in the world had a Constitution. A look at the increase in the number of countries over time and how constitutionalism caught up with nearly all of them



SOURCE: WDR 2017, COMPARATIVE CONSTITUTIONS PROJECT