



A thought for today

The highest levels of performance come to people who are centred, intuitive, creative and reflective – people who know to see a problem as an opportunity

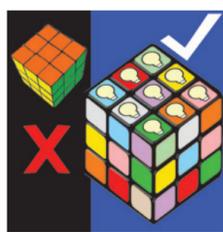
DEEPAK CHOPRA

Shuffling The Pack

Cabinet reshuffle banks on administrative experience to improve governance delivery

There's little doubt that the latest Cabinet reshuffle was effected keeping in mind the 2019 Lok Sabha polls. With just two years to go, the Narendra Modi government is clearly keen to focus on delivery of promises. However, many of its flagship initiatives such as Make in India, Swachh Bharat, smart cities, improving ease of doing business and so on have hardly gotten off the ground, even as economic growth slowed to 5.7% last quarter.

In this context the reshuffle has pruned underperforming ministers and brought in those with administrative experience. That appears to have precluded other considerations such as electability or recommendations from a coalition ally. None of the four ministers promoted to Cabinet rank – Dharmendra Pradhan, Piyush Goyal, Nirmala Sitharaman and Mukhtar Abbas Naqvi – are political heavyweights. Moreover NDA allies such as JD(U) haven't gotten much of a look-in.



Among the nine new faces in the council of ministers, former diplomat Hardeep Puri has been made MoS (independent charge) of housing and urban development, while former bureaucrat K Alphon has been given a similar profile in tourism with additional charge of electronics and IT. Additionally, former bureaucrat RK Singh has been made MoS (independent charge) of power and new and renewable energy, while former Mumbai top cop Satya Pal Singh is the new MoS for HRD and water resources.

Moving Suresh Prabhru from railways to commerce is a good move. Prabhru is sincere and has a head for financial management, but his personality may not be suited to the rough and tumble of the tough railways portfolio which has seen a spate of accidents recently. Meanwhile, Sitharaman has been made India's first full-time woman defence minister. While this will relieve finance minister Arun Jaitley who had concurrent charge of the portfolio, it remains to be seen how Sitharaman fits into her new role. In fact, a recurrent pattern in the appointments is that people with administrative experience have been placed outside their areas of domain expertise or comfort zones, perhaps in the expectation that a combination of administrative experience and an outsider's perspective will help them perform better. For instance Alphon would have been a natural in housing and urban development but has been given tourism and IT while Puri, rather than being given a position in trade or foreign affairs has the housing portfolio. This is an interesting experiment. But the proof of the pudding will be in the eating.

Remove The Barriers

Follow Niti Aayog recommendations on higher education, give students a chance

The Union government has just 20 months left to redraw the higher education landscape. Wallowing in a sea of mediocrity no sector is more ripe for reform, yet the chokehold of politicians and bureaucracy has survived. An opportunity beckons with official think tank Niti Aayog writing to finance and HRD ministries demanding amendments to laws that inhibit private investment and foreign university entry. It flagged the "not for profit" requirement for trusts/companies running universities/colleges, which hasn't prevented many entities from amassing crores through underhand practices like capitation fees.



Such profiteering has incentivised the wrong sort of "educationist" to enter the sector with no commitment to quality. Conversely, curbs on tuition fee and student intake have stunted the growth of colleges into universities and universities into centres of excellence. Contrast this with a scenario where foreign universities could set up campuses freely, listed companies could invest in education, regulation was light mainly focussing on ensuring transparency in fee structures, and UGC/AICTE restricted themselves to accreditation, scholarships and grants. A consequence of today's licence raj is that no Indian university figures prominently in global education rankings. Indians studying in the US doubled from 84,000 in 2005 to 1.65 lakh in 2015. Those are damning indictments of failure on the quality and even the quantity front.

The government is finalising norms for 20 public and private universities that can be categorised as "world class" or an "institute of eminence". However, assigning quality through legislation or officially conferring labels cannot substitute for the hard work, creativity, functional autonomy and return on investment that would organically promote quality. Instead, new players need legislative and regulatory changes that promise minimal state intervention. Rather than 20 elite institutes, remove barriers so that many more can flourish.

Dong of a New Era

North Korea goes ballistic after Uncle Sam chooses dong-ask, dong-tell

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North Korea has gone ballistic in more than one sense. With a series of provocative tests that have made its nuclear-capable missiles more potent and taken them farther, the regime of Kim Jong-un has signalled that in its search for security and survival, it will be unfazed by the United States. If anything – and unfortunately – it is the US-led alliance that is un-nerved by this wrong-'un (googly) by Jong-un. Who would have thought this baby-faced dictator would trump Trump?

Going by the traditional nomenclature of its missiles, North Korea's exertions may well be called Dong of a New Era. One of the first missiles Pyongyang acquired in the 1990s (thanks in no small part to its patron China) was called No-Dong, which worked with or without a hyphen. It was surreptitiously purchased by, purloined by, or passed on to China's other client Pakistan in the mid-90s, to be painted in green and presented as Ghauri (more accurately Ghori), named after the ruler of the Ghurid dynasty whose gory exploits led to centuries of Muslim rule in India.

Ideally, this should have been the time that the Bill Clinton-led United States homed in on the trio – China, North Korea and Pakistan – to break the proliferation nexus. But timid and untested, and displaying a distinct lack of cojones in hoping that barking dogs don't bite, Washington chose a dong-ask, dong-tell policy, allowing the proliferators a free run that resulted in the dong of a new era. By 2016 Pyongyang had graduated from dong to songs, brazenly telling Washington that one of its territories will be Guam with the wind if North Korean security was threatened. Its Pukkuksong-1, a submarine-launched ballistic missile, is said to be capable of eviscerating Guam and reaching further afield, a development that has led to much song and dance in America.

Of course, it is another matter that Washington can vaporise North Korea. But the fumes of such destruction will also leave US ally South Korea, and possibly its neighbour Japan, smoking – not exactly the kind of dirge the US wants to hear. It's a no-win situation that reminds one of the much-cited poster from the Cold War era that gave salutary advice on what to do in case of a nuclear war: The final three steps included running out into an open field, putting your head between your legs... and kissing your ass goodbye. Either party could name their final missile "Swansong".

Legalise Sex By Consent

Section 377 has become untenable in the light of Supreme Court's historic privacy judgment

Ajit Prakash Shah and Vrinda Bhandari



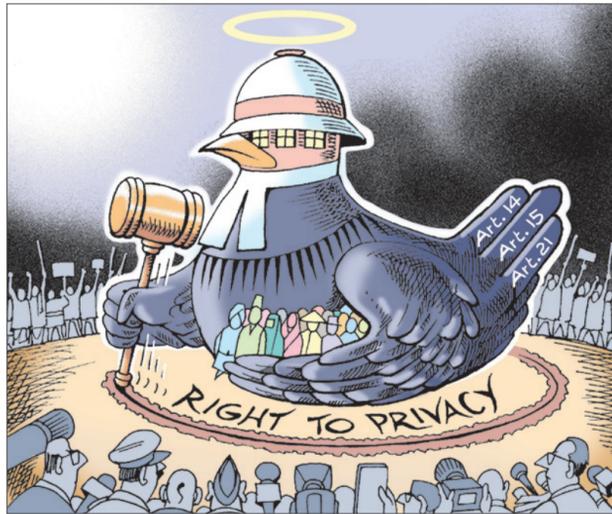
In its historic judgment in 'Justice Puttaswamy vs Union of India', the Supreme Court held that privacy is a fundamental right. In doing so, it also removed the basis for its decision in 'Koushal', which had upheld the constitutionality of Section 377 of the Indian Penal Code (IPC).

Justice Chandrachud, speaking on behalf of four judges, termed the court's views on the "so-called rights" of the LGBTQI community in Koushal "unsustainable", and clarified that the "right to privacy and the protection of sexual orientation lie at the core of the fundamental rights guaranteed by Articles 14, 15 and 21 of the Constitution". Justice Kaul, in his separate opinion, concurred with Justice Chandrachud's views, thus forming the majority opinion of the court on this count.

However, since the challenge to Section 377 is currently pending consideration before a larger bench, the court stopped short of declaring it unconstitutional. The court's observations in Puttaswamy give us an opportunity to revisit the issues surrounding the continued criminalisation of consensual sexual acts of adults in private, through the retention of Section 377 on the statute book.

The existence of Section 377 raises fundamental questions. Why should someone's dignity and privacy be undermined by their sexual preference? Why should someone's fundamental life choices be conditioned by other people's prejudice, ignorance and stigmatisation? Why should public health be compromised by an archaic and pedantic notion of public morality? And finally, why should a sizeable population of Indians (or even a "minuscule minority") be deemed criminals in the eyes of the law, simply for being themselves?

At the outset though, it is important to understand why privacy is particularly important to the LGBTQI community. First, privacy has come to be viewed as central to one's identity, dignity, sense of



self and autonomy. In this view privacy is a pre-requisite for self-development or, as Cohen puts it, a shorthand for "breathing space". Section 377 denies a person the right to full personhood, by going against the constitutional values of dignity, fraternity and inclusiveness.

Second, an integral part of such individual/decisional autonomy is the ability to make one's own choices, develop and determine one's personality and identity, and have intimacy and meaningful inter-personal relations. At its root, thus, it is the freedom to express one's identity without fear.

Third, the existence of the law, regardless of its exercise, causes a chilling effect on the true expression of one's identity. It encourages anti-gay violence and facilitates harassment, blackmail and exploitation by the police and larger society. As noted by the Supreme Court sexual orientation is an essential component of identity, whose fulfilment is hindered when there is a loss of privacy and dignity.

Finally, the loss of privacy can lead to discrimination and denial of opportunities, leaving many amongst the LGBTQI community on the margins of society.

Just as homosexuality is not a 'western import', the Indian Penal Code was drafted by the British, based on prevailing Victorian notions of morality

The Supreme Court was cognisant of this in its judgment in NALSA, concerning transgender persons, where it observed "non-recognition of Hijras/transgender persons denies them equal protection of law... thereby leaving them extremely vulnerable to harassment, violence and sexual assault."

A modern democracy rests on the twin principles of majority rule and the need to protect fundamental rights of all citizens. Fundamental rights are inalienable and transcend challenge or limitation. These rights identify subjects, withdraw them from political controversy, place them beyond the reach of majorities, and establish them as legal principles to be applied by courts equally for everyone. This was recognised by the court in

Puttaswamy (the plurality opinion and separate concurrences), holding that privacy is an inalienable right that inheres in every person, which is reflected in the Fundamental Rights Chapter of the Constitution, rather than guaranteed by it. In this context, it is important to appreciate that just as homosexuality is not a 'western import', IPC was neither Indian, nor a gift from God. IPC was drafted by the British, based on prevailing Victorian notions of morality which were imported to India, and continue to remain here long after they have been discarded by the British.

The second aspect of a constitutional democracy relates to the counter-majoritarian role played by the judiciary, which has to ensure that a majoritarian government does not override minority rights. While law may be the product of representative majoritarian moral beliefs, constitutional guarantees (and constitutional morality) will lose significance if they are given majoritarian interpretations.

There are many groups, or "discrete and insular minorities" who remain excluded from the everyday exchanges and compromises of democratic politics, which tend to prioritise political expediency over protection of rights. In 2016, the Lok Sabha voted against Shashi Tharoor's bill to decriminalise homosexuality. In this background, Justice Kennedy's majority opinion in the US Supreme Court gay marriage ruling in Obergefell vs Hodges bears reiteration: "The nation's courts are open to injured individuals who come to them to vindicate their own direct, personal stake in our basic charter. An individual can invoke a right to constitutional protection when he or she is harmed, even if the broader public disagrees and even if the legislature refuses to act."

The Supreme Court in Puttaswamy has laid the ground for overruling Koushal. It is now up to the same court to recognise the validity of same-sex love. But that will not be enough. The Parliament must also act and pass a comprehensive anti-discrimination law, to protect such minority and disadvantaged groups. Only then will we move a step closer to achieving the constitutional goal of equality.

Ajit Prakash Shah is former Chief Justice of Delhi high court, Vrinda Bhandari is an advocate

'School enrolment numbers high in last decade ... but there is a learning crisis here. Students in schools but not learning skills'

Earlier this year India announced that it would be ending its almost decade-long boycott of the Programme for International Students Assessment (PISA), organised by the Organisation of Economic Cooperation and Development (OECD) to rank countries based on learning levels of 15-year-olds in reading, mathematics and science. The last time Indian students participated in this global assessment in 2009, they stood 72nd out of 74 participating countries. The World Bank's senior director for education and Peru's former education minister Jaime Saavedra spoke to Anam Ajmal about India's re-entry into PISA, why the Indian education system needs to shift focus from quantity to quality and what we can learn from other countries:

Q&A

■ When will India participate again in PISA, which ranks countries based on learning levels of 15-year-old students?

India last participated in PISA in 2009 but the minister for human resources and development has announced that India will participate again in 2021. This is a very good move because international testing is critical to understand where a country stands. This is especially important for India because it aspires to be a competitive economy and be a part of the big league.

■ How does India fare when compared to China, which also took PISA for the

first time in 2009?

China's performance was considerably better but it is unfair to compare the two countries. It is true that India will have to make a much faster progress than what we have seen in the past and it needs to take intermediate steps. India sees a much higher incidence of teacher absenteeism and that has to stop. Classroom practices also have to improve and that's where the two countries diverge. But India has already identified the challenges. It can now only move ahead.

■ What has changed since India's last participation in PISA in 2009?

I think a strong culture has emerged where India is not scared to know where it stands, but instead wants to know its standing so that it can narrow disparities. More important than just PISA is the fact that India will now implement an annual National Assessment Survey (NAS), starting 2017.

There have been some very positive changes in education under this government because the NAS samples will now not be collected at the state level but at the district level. With this, the local capacities are going to improve because the approach is not generic any more.

Authorities will now be able to use the NAS results at micro levels to customise and improve education.

■ What are some of the success models that can be incorporated to bring education in India on par with the international levels?

When Peru first participated in PISA in 2012, it ranked last among 65 countries. This was a wakeup call for everyone because we knew where we stood. So, a strong four-pillar reformation system was implemented, focussing on teachers, pedagogical training programmes, management and infrastructure. In 2015, Peru's improvement was the fourth fastest in the world, which was very significant.

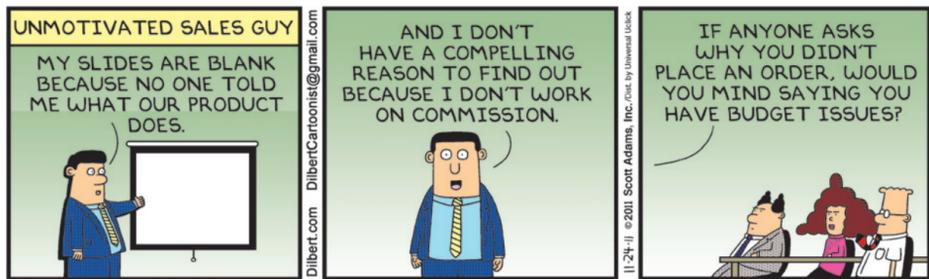
■ What are some inherent flaws in the Indian education system?

India has made huge progress in bringing children to school. So, school enrolment numbers have been very high during the last decade, particularly at the elementary level. In global terms, India is very important because of its size. So, for the world to do well, we need India to do well. But today we see that there is a learning crisis here. Increasingly, students are going to schools but they are not learning foundational skills that can help them in an increasingly competitive world. This happens because of several factors like lack of infrastructure, teachers, proper training programmes, etc.

■ How can the government overcome these flaws?

Not just in India but even globally, investment in education has been used to set up the basic infrastructure and to ensure the presence of teachers. But that is only the first step. India faces several challenges but the main issue is the quality of teachers. We need to promote the right interaction between teachers and students, improve the academic programmes, school management, decrease student dropout rates. But teacher training is the most important because we have to ensure that teachers have the right working environment where they have the scope for growth, the right professional development and proper incentive.

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New Beginnings Are Disguised As Painful Endings

Sumit Paul

A commonly quoted aphorism says, "New beginnings are often disguised as painful endings." We resist and often resent the changes. But change is the key to life, because, despite change being seemingly painful, it's ever necessary.

We tend to get used to the rut and routine and begin to love that as the sole option available to us. A sort of mental complacency sets in and we don't want to alter that. The human mind doesn't like to break a set pattern. But until that set and fixed pattern is broken, how can something new and even more exciting be welcomed?

What's perceived as painful and undesirable, often paves the way for something better – and if not better, at least different. In difference, lies life's momentum and progress. Once a man came to JKrishnamurti. He looked

disconsolate because he had broken up with his beloved of many years.

Krishnamurti told him to consider the breakup as a blessing in disguise. "To know love in its myriad forms and emotions ever-evolving, breakups are a must," said the wise man.

Apparently, painful endings have a silver lining. They carry positivism in their wombs. They're the indicators of a better and greater tomorrow. When Hiroshima and Nagasaki were nuked during the last days of Second World War in 1945 on August 6 and 9 respectively, Albert Einstein said, "Though it's terribly painful, new lives and purposes will emerge from the ashes of two great cities and they'll become even greater." Though he was saddened by the horrific bombings, Einstein also looked at it from the prism of optimism, that the people of the

two cities will rise up and work towards the future.

Needless to say, if today you visit Hiroshima and Nagasaki, you just can't imagine that seven decades ago, both these cities were very nearly decimated. The pain and trauma of near-annihilation gave birth to stronger determination and resolve. Most importantly, it removed the complacency that tends to set in when everything falls into a predictable routine. Former US President John F Kennedy would say, "Phoenix always emerges from the ashes." When life throws challenges at us, however difficult and cruel they are, the human spirit ought to triumph in the end.

Traumatic occurrences always have a disguised positive side to them. So obviously, they're invisible at first blush. Hidden opportunities make us

more determined and fills us with life-preserving energy. Until we're jolted out of our peaceful slumber, no epochal event can be expected to happen.

Change for the better always comes after a seemingly hopeless situation. Nadir always evolves into pinnacle. Mirza Ghalib put it this way: "Ishrat-e-qatra hai dariya mein fana ho jaana/ Dard ka had se guzar na hai dawa ho jaana." "The significance of a drop of water is to get merged into the river/ When pain becomes unbearable, it turns into remedy." We often perceive (painful) things through a tunnel vision. We don't let other options and opportunities emerge out of them.

So, broaden your vision by deepening your perceptions and take pain in perspective. Mind you, it'll open up a plethora of positive outcomes that will become clear in the long run. All we need is a pair of eyes unblinded by fear, apprehension and prejudice.

Sacredspace

The Government

The way people in democracies think of the government as something different from themselves, is a real handicap. And, of course, sometimes, the government confirms their opinion.

Lewis Mumford

