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THE EDITORIAL PAGE

The Indian EXPRESS

FOUNDED BY
RAMNATH GOENKA

BECAUSE THE TRUTH INVOLVES US ALL

RAJBHAVAN DHARMA

Rajasthan Governor's role in current crisis reinforces impression that office takes cue from Centre, not Constitution

THE POLITICAL TURNOUT in Rajasthan has, once again, shone unflattering light on the office of the governor. On Monday, Governor Kalraj Mishra stalled the Ashok Gehlot government's recommendation for an assembly session. A few days ago, he vetoed the state government's proposal for a floor test. The governor has said that "the Raj Bhavan has no intention of not calling an assembly session" and asked the state government to submit a fresh proposal. But his repeated queries and the delay in convening the assembly — citing the COVID situation, among other reasons — invite questions about his commitment to play by the book in a scenario in which neither of the leading players seems to be playing with a straight bat. By all accounts, the chief minister himself has vacillated in the last few days on the question of the floor test.

Articles 163 and 174 of the Constitution deal with the governor's role in convening an assembly session. The latter gives Raj Bhavan the power to summon, "the House or each house of legislature to meet at such time and place as he thinks fit". However, the Supreme Court has removed any confusion that might arise over the governor's discretion in the matter. In 2016, in *Nabam Rebia and Barnam Felix vs Deputy Speaker*, the Court referred to discussions in the Constituent Assembly and noted that the framers of the Constitution, "decided not to vest discretion with the Governor, in the matter of summoning and dissolving the House, or Houses of the State Legislature." Observing that the governor was a nominee of the president, the SC said that "such a nominee cannot have overriding powers over the representatives of the people who constitute the House or Houses of the State Legislature and for even the executive government functioning under the Council of Ministers with the Chief Minister as its head".

Accusations of political partisanship, or failure to abide by the letter and spirit of the Constitution, have for long dogged the governor's office. But it was in the 1980s and 1990s, when it became common for individuals still in active politics to be ennobled in Raj Bhavans, that charges of blatant politicisation of the gubernatorial office became more frequent. In 1994, the SC's landmark *Bommai* judgment sought to curb the misuse of Article 356 to unseat state governments led by parties opposed to the ruling party at the Centre, and laid down clear limits of the governor's authority. However, the trend of governors exceeding their brief in the formation and bringing down of governments has persisted. The governor's role has been questioned at least six times after the Narendra Modi government assumed office — the Supreme Court has been called to intervene on three occasions. These interventions have meant that however politically murky Rajasthan's crisis might be, its legal and constitutional aspects are lucid. Against this backdrop, the Rajasthan Governor's procrastination in convening the assembly session only confirms the widely held impression that the high office may be taking its cues from the Centre, not the Constitution.

RUNNING DRY

GST Council must decide on how to protect states' GST revenues, reduce uncertainty

THE ISSUE OF compensating states for the shortfall in their goods and services tax (GST) collections has been contentious. Several states have argued that the Centre has been delaying the compensation owed to them due to lower collections through the compensation cess route. To address this issue, on Monday, the Central government announced that it had released Rs 13,806 crore to states for the compensation owed to them for March 2020, also noting that the entire amount upto 2019-20 had been released. According to the data, as against cess collections of Rs 95,444 crore, the total compensation paid to states stands at a staggering Rs 1.65 lakh crore in 2019-20, underlining the extent of slippage in state GST collections in 2019-20. The situation is likely to worsen this year. With economic activity likely to remain well below pre-COVID levels, state GST collections will fall well short of expectations. Collections through the compensation cess will not be enough to offset the shortfall in states' revenues as measured against their projected revenue growth. As income from GST accounts for a significant share of state revenue, this needs attending to.

The GST Council, in which the Centre effectively has a veto, is expected to meet shortly to deliberate on this issue. While the rationale for assuring states a fixed growth rate of 14 per cent for their GST collections can be debated — linking it to nominal GDP growth may have been a better alternative — not abiding by its promise is certainly not in line with the spirit of cooperative federalism espoused by the Centre. It will set a bad precedent. The challenge, therefore, facing the GST council is two-fold: First, how to compensate states for the greater than expected shortfall this year, and second, whether or not the compensation cess should be extended beyond the five-year period that was originally agreed upon.

Several options have been debated. First, market borrowing has been discussed as a possible way out of this quagmire. However, its legality will need to be examined. Hiking tax rates, or the compensation cess, may not be appropriate at the current juncture. With states also likely to witness a significant shortfall in tax development this year, as compared to the budget estimates, further shortfalls in their revenue, despite the additional borrowing space, will severely restrict their spending. Given that states are at the forefront of fighting the COVID pandemic, the council must ensure adequate flow of resources to them, and reduce the uncertainty in state finances.

IPL IN THE DESERT

Amid the pandemic, a long lost romance could be recreated, a new chapter could begin

IT SEEMS EVEN the pandemic cannot prevent another edition of the Indian Premier League from rolling forth. With the Emirates Cricket Board confirming the Indian counterpart's intent and interest in shifting the premier domestic tournament to the UAE, it would be only a matter of clearing the ministerial and bureaucratic formalities before the world's best cricketers descend in the country for the 13th edition of the league, tentatively scheduled from mid-September to early November. Though there could be logistical hurdles, the league won't be trimmed or crunched, it will run the full course. The authorities might allow spectators as well. The UAE could be an oasis for cricket enthusiasts, like it has been for Pakistan cricket since the Lahore shootings in 2009.

Cricket in the Gulf would surely whip up nostalgia and romance for cricket watchers of a certain vintage, those who have grown up watching the game in the 80s and 90s, when the annual summer fixtures in Sharjah had the fervour of a World Cup. Some of the most remarkable (and heartbreaking) moments were etched in Sharjah. The Sachin Tendulkar knock, Mandad six, Javed hat-trick or those Friday finals — memories that define personalities, rivalries, teenage and early adulthood.

But the times have changed and it may well be that the romance of Sharjah cricket would never be recreated. Yet the reacquaintance of Indian cricket with the UAE could be significant on several grounds. First, it would assure fans that this year's IPL would not be suspended, saving the board, franchises and players several millions. Second, the UAE could always be a buffer venue in the future in times of crisis. Third, it could pave the way for India-Pakistan encounters if the political weather clears between the two countries.



VIJAY GOKHALE

OVER THE LAST six months, in the shadow of COVID-19, President Xi Jinping has become China's Supreme Leader.

The July 15 issue of the Chinese Communist Party journal, *Qiushi* (Seeking Truth), has declared in an editorial that it is the highest duty of all Chinese to "safeguard the core position of General Secretary Xi Jinping". It then, astonishingly, goes on to make crystal clear that "to safeguard the core position of General Secretary Xi Jinping means only Xi Jinping and no other individual." In short, there is no other leader and no power-centre other than Xi.

It took many years for Mao Zedong to dominate a party that he had literally built and led to victory. Even then, at the height of his power, he was still compelled to share authority at times with others like Liu Shaoqi and Zhou Enlai, and PLA Marshals Zhu De and Ye Jianying.

President Xi Jinping, by contrast, appears to have managed this in a mere six years after 2013, and within just the past six months, he seems to have risen to the position of Supreme Leader of China. His red pedigree as well as his family's experiences of power and deprivation may have given him his sense of entitlement and desire for power, but it is not the whole explanation.

It is worth recalling that he was chosen as general secretary in November 2012, because the party feared that Bo Xilai, another Red Child of the Revolution, displayed dangerous traits of megalomania and Maoism. Xi had given no hint of such traits. Bo Xilai was handsome, flamboyant and media-friendly. Xi was modest in both dress and demeanour and, in a word, underwhelming. Such comparison is important to comprehend how he rose without being viewed as a "thicket". Those who encountered him before 2012 tended to judge him only by his appearance or outward demeanour. Perhaps for this reason, people misjudge him still.

A rare interview that he gave in August 2010 to a Chinese journal revealed three qualities: Persistence, patience and a strong belief in himself. He admitted that politics was a risky business and he was playing the long game. In his words, "once you have gone into politics, it is like crossing a river. No matter how many obstacles you meet, there is only one way, and that is forward." He was not to be deterred by obstacles. "If you have a position on something, the thing is to stick

World is dealing with a leader driven by sense of his own genius, who believes he will shape a Chinese Century

The pandemic was a 'black swan', but Xi sensed opportunity. In his own words, in an interview, "If you want to become a general you must be able to win a battle... Even if you have the ability to win battles, you don't have battles every day, in particular not in times of peace. Only if there are battles, there are opportunities. One can say that only if a chance should arise and you make use of it right away, you will succeed." Xi saw his chance and acted swiftly. After declaring victory over COVID-19 in early April, Xi has deftly moved to remove the last vestiges of opposition. Earlier this month, the Secretary General of the Political and Legal Affairs Commission called for 'scraping' the bone to remove the poison.

with it and continue one's work. Then, in the final analysis, it will give results." What came across through the interview was his steely resolve.

In the last seven years, President Xi has systematically neutralised his political opponents through arrests and trials; that includes Sun Zhengcai, who was the heir presumptive. The anti-corruption campaign has created a wave of "terror". President Xi has kept his promise to take down "tigers and flies", by removing hundreds of officials who belonged to the factions of his two predecessors. In March 2018, the two-term limit for the Chinese President was removed from the Constitution to allow President Xi to continue beyond March 2023.

President Xi has tightened his grip over the state's security apparatus. The People's Armed Police (PAP) has been brought under his direct authority. The People's Liberation Army (PLA) has similarly been purged. Some of its highest-ranking serving military leaders like Generals Zhang Yang and Fang Fenghui have fallen in 2017. President Xi has assumed the position of the Commander-in-Chief of the PLA in 2016, a title even Mao had not assumed despite his considerable experience of higher military command. Xi has ensured, at least on paper, that the PLA and PAP will not be an independent player in a palace coup, as was the case during the fall of the Gang of Four in 1976.

To secure constitutional legitimacy, in 2017 and 2018, "Xi Jinping Thought" was written into the party and state constitutions respectively. No leader after Mao had attempted this; in Deng's case it was posthumous. The party speaks of a "New Era" that has begun with Xi. Deng's political arrangements are considered outdated and, therefore, not suitable. Collective responsibility has ended. Even the Premier of the State Council is a pale shadow of his predecessors.

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After declaring victory over COVID-19 in

WORDLY WISE

THE POWER TO TAX IS THE POWER TO DESTROY.

— JOHN MARSHALL

early April, Xi has deftly moved to remove the last vestiges of opposition. Earlier this month, the Secretary General of the Political and Legal Affairs Commission called for 'scraping' the bone to remove the poison. The security forces are being asked to show personal loyalty to President Xi. New regulations on Building the Communist Party of China's Military have also been formulated. The Military Reserves are now under his control. In short, all the armed instruments of the state are at his service.

According to one media report, party members are forbidden from certain actions, including inter alia, expressing opinions or making statements that deviate from Xi as the "core", discussing political rumours and forming cliques. Earlier, in May, Xi Jinping spoke at a special Democratic Life meeting of the Politburo, virtually counselling China's highest leadership that there will be no second chances. A revised set of Guidelines for Political Life for the New Era will replace the rules of behaviour for party cadres put into place by Deng Xiaoping in 1982. The old order no longer holds, the new era requires new rules.

It is reported that the Ministry of Education issued new guidelines for ideological and Political Development of the Higher Education Curriculum to include Xi Jinping's ideas on "China Dream" and "Socialism with Chinese Characteristics in the New Era", as mandatory university courses. On July 21, the Chinese Foreign Ministry established a Xi Jinping Research Centre for Diplomatic Thought. Similar Centres exist in the Chinese Academy of Social Sciences, the Central Party School and leading universities. Studying Xi's words and thought is now a national priority in every field.

The world is, therefore, likely dealing with a Chinese leader unlike any since Mao, driven by a sense of his own genius, and believing that he will be the shaper of the 21st century in the Chinese Century. In July 2021 the party will mark its 100th anniversary. Xi Jinping intends to be the Leader of the "Second Hundred" just as Mao Zedong is regarded as the Leader of the "First Hundred". This means the world will witness the end of the century for Jinping for some time. It is, therefore, important to get a proper measure of the person.

The writer was India's Ambassador to China

COURT AND A FINE LINE

Rajasthan High Court must take into account SC verdict, Speaker's powers



VIKRAJAJIT SEN

THE SPEAKER of the Rajasthan State Assembly has requested the Supreme Court to permit the withdrawal of the Special Leave Petition filed by him, and his request was granted without ado. The challenge to the interim orders of the Rajasthan High Court directing that status quo be maintained with regard to the impugned notices dated July 14, 2020, issued to the Sachin Pilot spin-doctor group of the Indian National Congress is at this pass. The writ petition in which this status quo order came to be passed is yet to be finally decided, and will be listed for hearing on mentioning by the counsel for the parties. The public would have expected the chief justice to fix an actual and early date of hearing.

The *Kihoto Hollohan* decision of the Supreme Court delivered in 1992 will indubitably constitute the fulcrum of arguments. The Constitution Bench which heard it was split 3:2. The plurality upheld the constitutionality of the Tenth Schedule of the Constitution. However, the minority struck it down on the premise that it violated the basic structure of the Constitution and should have been circulated to all state legislatures and should have received the assent of their majority.

In the course of the very brief hearing before the Supreme Court, the Bench had com-

mented that the correctness of *Kihoto Hollohan* needs to be considered. If this exercise had been undertaken and the majority opinion overturned, it would have required a seven-judge Bench to be constituted in respect of the constitutionality of the Tenth Schedule, which challenge has not been voiced from any quarter. The cherished tenet of independence of the executive, the legislature and the judiciary has presently received respite.

The High Court is not empowered to unsettle *Kihoto Hollohan* and must apply its ratio. This is that the Chairman/Speaker is the final arbiter of whether any member(s) of Parliament or a legislature has become subject to disqualification. The very fine distinction or issue inter alia culled out by the Rajasthan High Court to exercise its extraordinary constitutional jurisdiction under Article 226 is whether *Kihoto Hollohan* had tested the vires of Para 2 (1)(a) of the Tenth Schedule in the context of "intra-party dissent". This Para postulates disqualification of a member of a House belonging to any party "if he has voluntarily given up his membership of such political party". This is against the backdrop of the opinion in paragraph 21 of the judgment of the Supreme Court in *Kihoto Hollohan* that "paragraph 2 of the Tenth Schedule of the

Constitution is valid. Its provisions do not suffer from the vice of subverting democratic rights of elected members of Parliament and the legislatures of the States. It does not violate their freedom of speech, freedom of vote and conscience as intended."

Equally remarkable is the rejection by the Rajasthan High Court on the grounds of lack of jurisdiction of the prayer for "upholding the status of the petitioners as members of the Rajasthan Legislative Assembly on account of them continuing to be members of the Indian National Congress" and "declaring that the alleged actions of the petitioners as members of the Rajasthan Legislative Assembly do not fall within the purview of disqualification envisaged under para 2 of the Tenth Schedule". Nevertheless, the status quo came to be ordered.

The high courts and the Supreme Court routinely refuse to interfere in matters where the concerned authority has merely issued a show cause notice or granted an opportunity of being heard. The Rajasthan High Court will have to decide whether the Speaker has done anything else.

The writer is a former judge of the Supreme Court of India

JULY 29, 1980, FORTY YEARS AGO

ASSAM ACCORD

FOR THE SECOND day, the latest situation in Assam was reviewed at a high-level meeting in the context of the accord which Manipur Chief Minister Dorendra Singh last week claimed to have reached with the ASUU and AKCP on ending the 10-month-long agitation on the foreign nationals' issue. The meeting was presided over by Home Minister Zail Singh, and attended, among others, Krishnarao Rao Sahu, Secretary to the PM. According to official sources, Dorendra Singh who had been negotiating with the agitation leaders as an "emissary" of the Prime Minister had an hour-long meeting with Rao

Sahab when he reported on the "accord" and his talks with the agitation leaders.

CRPF IN KASHMIR

THE CENTRE is rushing additional units of the CRPF to Kashmir to help the local authorities maintain law and order in the troubled areas of the state. According to Home Ministry sources, the reinforcement was being sent in response to an SOS from the Chief Minister Sheikh Abdul Aziz. The CM talked with the Union Home Minister on the telephone and discussed the latest situation in Srinagar. The Sheikh assured all Singh that the situation was under control. But, he urged the Centre to

send additional units of the CRPF as a precautionary measure.

BIHAR FLOODS

THE WIDENING OF the breach in the retired embankment off Piprai-Pipraghat in Champaran district is widening the area of a mere 50 kha 3,200 feet and the waters of swollen Gandak have so far swept across around a dozen villages and flooded the Madhuan and Basi cantons. The situation created by the breach causing concern because, despite measures purporting to have been taken by local engineers the breach has widened alarmingly in the last three days.



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THE IDEAS PAGE

After the rural recovery

As the virus spreads geographically, the number of districts reporting a large number of COVID-19 cases and deaths is growing. This poses new policy challenges



NEELKANTH MISHRA

WITH THE LOCKDOWNS lifting from May onwards, most companies have reported a robust rebound in rural sales. Not only tractors, but rural sales of cement and soap are also doing better than urban sales, and are nearly back to pre-crisis levels. This has occurred even as activity indicators like rail freight, GST e-way bill generation, power demand and mobility trackers have pointed to a stagnation since the middle of June. Even from unacceptably low levels, several indicators show a dip in July.

If trends in sales booked by companies diverge from those shown by indicators, one must trust the former, as they reflect actual transactions. Further, most of the concurrent indicators being tracked have an urban bias, and likely do not capture rural trends accurately. Mobility indicators, for example, track movements of smartphones, which still have low rural penetration.

What explains the rural recovery? Understanding this is important to understand its sustainability.

The shift of the population may have helped. Reverse migration has meant a nearly 5 per cent lower urban population (nearly 10 per cent in larger cities), hurting demand and activity in essential goods and services, and boosting them in rural areas by about 3 per cent. However, the drop in remittances this entails counters some of this impact.

Other commonly cited reasons are a strong rabi harvest and rural-focused government spending. But as we will see, the net impact is too small in magnitude to explain the revival.

Let us start with the rabi harvest. While agriculture is by definition rural, rural is no longer just about agriculture—a point we have been making for many years ('Rethinking the rural', IE, May 23, 2013). Agriculture is in our estimate now only 29 per cent of rural GDP, even though it employs 58 per cent of the rural workforce. Further, rabi crops account for only around a sixth of total agricultural output, and not all of it is marketable surplus as a large number of farmers only harvest enough to feed themselves. The rise in procurement of wheat and cotton helps rural cash flows but is small in the context of the nearly Rs 95 lakh crore of rural GDP.

On the other hand, weak demand in perishables could be draining up to Rs 10,000 crore a month from farmers' cash flows. Milk is more than a fifth of all agricultural output by value and has seen weak demand due to roadside tea stalls, hotels and restaurants being shut. Subsidised celebrations in the upcoming festive season could further pressure demand for milk-based sweets and ghee. Similarly, disruptions in distribution have hurt farmer incomes from fruits and vegetables (with a few exceptions like potatoes), meat and fish.

Now, let us consider the impact of government spending. The Centre has ramped up expenditure targeted at the poor, like free grains, direct cash transfers to women's bank accounts, higher MGNREGS spending, and has also front-loaded PM-Kisan payments. Together with the higher crop procurement, these add up to an additional Rs 35,000 crore a month, so far. Annualised, this would be about 4.5 per cent of rural GDP—indeed a substantial sum. However, offsetting these cash inflows is a sharp drop in agricultural credit

growth, weak domestic remittances (if we assume 25 million returned migrants, who on average sent Rs 6,000 every month, the drop is Rs 15,000 crore), and lower income from agricultural perishables. The net impact comes to just Rs 7,500 crore a month—0.9 per cent of rural GDP.

Thus, government spending has served to negate the stress from some of the known factors in agriculture and due to migration. But we have not yet accounted for the impact of activity restrictions in non-agricultural activities, which are 71 per cent of rural GDP. The scale of the income loss would not be in decimal points of GDP but in multiples of 5 per cent. The rapid growth in MGNREGS person-days indicates a paucity of other jobs in the rural economy as it is, after all, a demand-driven scheme intended to prevent deprivation. At wages of Rs 200 per day, someone working all 30 days in a month would earn Rs 6,000—enough only for sustenance.

States that have seen returning inter-state migrant workers have seen faster growth in person-days and states like Maharashtra, Punjab and Tamil Nadu have seen a drop, supporting this hypothesis, and serving the intended purpose behind the increase in MGNREGS budgets this year.

Thus, a bigger driver of the rapid rural revival post the lockdowns is the faster normalisation of non-agricultural activities in rural areas. Given that outside the worst 50 districts, which are all urban centres, reported cases per million population were less than 100 till June, compared to nearly 10,000 in the worst-affected metros, activities are likely to have rebounded faster in the former. Not only was the administrative imposition of lockdowns and containment zones less widespread, even the

Growth is the only way out of this vicious cycle, as it would provide more taxes and improve debt sustainability. As private investment and consumption settle at far lower levels than earlier anticipated, the government's role in the economy over the next two years or so would need to be much larger than it has been in the last three decades.

While the financing and sustainability aspects of this issue have been discussed, it may also need a new institutional architecture to manage this temporary but significantly larger role.

people were less afraid to move around. Anecdotal, market movement in smaller towns and rural areas had normalised rapidly.

However, this is changing now. As the virus spreads geographically, the number of districts reporting a large number of COVID-19 cases and deaths is growing. This means more administrative restrictions, as well as people becoming cautious as they become aware of infections and deaths around them.

This poses new policy challenges. Though cities like Mumbai are showing some signs of the curve flattening (given the lack of reliability of case and death numbers, we track the number of occupied oxygen beds, which has been unchanged for two weeks), the level of activity curtailed to achieve this is unacceptable. Local trains, schools, restaurants and malls are shut, and offices are permitted only a third of their workforce.

Given the low tax compliance, government spending in India as a share of GDP is low by global standards. Further, a large part of that expenditure is under committed heads of interest, salary, pension and subsidies. Growth is the only way out of this vicious cycle, as it would provide more taxes and improve debt sustainability. As private investment and consumption settle at far lower levels than earlier anticipated, the government's role in the economy over the next two years or so would need to be much larger than it has been in the last three decades. While the financing and sustainability aspects of this issue have been discussed, it may also need a new institutional architecture to manage this temporary but significantly larger role.

The writer is co-head of APAC Strategy and India Strategist for Credit Suisse

WHAT THE OTHERS SAY

"Without testing and tracing, it is only a matter of time before pocket lockdowns turn national and push the country further into uncertainty. Only this time, it could kill more people and completely kill public confidence in the government."

— KATHMANDU POST

A little less certainty, a little more empathy

If anything, the debate over cancel culture has shown us that it's imperative to introspect on who we are when we are not performing to an audience



PAROMITA CHAKRABARTI

DAYS AFTER New York-based Harper's magazine published a letter, that had among its signatories academics, intellectuals and writers such as Noam Chomsky, Margaret Atwood, Martin Amis, John Banville and J.K. Rowling, warning against the rising tide of intolerance in civil discourse, in Mumbai, comedian Agnir Joshi was being panned for an act she'd done in April 2019. In the segment, a clip of which had found its way onto the internet, Joshi was speaking on the upcoming statue of Shivaji in Maharashtra, the home of the 17th century Maratha leader. Before long, condemnation and threats of bodily harm were pouring in both online and off it, with a YouTuber delivering rape threats in an explosive-laden Instagram post.

How are the two connected, though? In the letter, the signatories write, "While we have come to expect this on the radical right, censoriousness is also spreading more widely in our culture: an intolerance of opposing views, a vogue for public shaming and ostracism, and the tendency to dissolve complex policy issues in a blinding moral certainty... it is now all too common to hear calls for swift and severe retribution in response to perceived transgressions of speech and thought." It further states, "The restriction of debate, whether by a repressive government or an intolerant society, invariably hurts those who lack power and makes everyone less capable of democratic participation. The way to defeat bad ideas is by exposure, argument, and persuasion, not by trying to silence or wish them away." Loosely speaking, the letter was calling for cancel culture—the same that Joshi was facing—to be cancelled.

As many critics noted, despite its intentions, the letter was not without its flaws. Rowling was already under fire for her controversial views on LGBTQ rights and the position of privilege enjoyed by the signatories was not lost on anyone. If we look around, cancel culture has always existed. It's been there in elite institutes, in the privileged coteries of old boys' associations, in the corridors of power, where old money spoke to its power and in professions meant to foster diversity. Cancel culture has fundamentally worked in favour of the privileged because getting their voices to drown out those who did not conform has never been an issue. From Hollywood producer Harvey Weinstein to a former Indian union minister accused of sexual misconduct, if the #MeToo movement that began in 2017 showed anything it was this: That it takes decades for those at the receiving end of a power imbalance to make them-

selves heard, and oftentimes, that may not be enough.

What the call-out culture achieved, at least initially, was to push back at this imbalance of power by creating a sense of community among those who share a long history of marginalisation and for whom traditional modes of redressal have often proven to be ineffective. And so, in a decade that has seen a remarkable number of people's movements, cancel culture has been both a solace and a sharp scimitar. It has fostered a sense of solidarity, an alignment of forces to counter injustice, but it has not been an impulse privy to the marginalised alone. In banding together and protecting their interests, the powerful have long determined who gets to make the rules of the game and there is no equality in that.

The problem with the age of wokeism is that it does not allow us room for mistakes. Compartmentalised into us-versus-them binaries, it makes a virtue out of moral certitude. A couple of years ago, during an interview at a literary festival, the feminist historian Mary Beard spoke of the necessity to accommodate nuance in conversations. "The fact that we don't easily agree doesn't mean that we have to be at war with each other. These are things that are very hard, and rightly hard, to agree upon. What people are allowed to say is one of the big issues that every political culture has always faced. We are not new in facing this. We need to examine it, talk about it outside some kind of echo chamber," she said.

If anything, the debate over cancel culture has shown us that it's imperative to introspect on who we are when we are not performing to an audience. In disquieting times, speaking up is a virtue and so is taking sides. But, sometimes, pausing to come up with more ethically brave choices. How much of our outrage is to ourselves? How far are we prepared to shrug off our privileges to understand that which affronts us? Is it possible that we are articulating our own remaining support in ways that can come across as condescension? Can one feel equally strongly about every injustice in the world? Is it possible to admit to being wrong and begin again? In this constant masculinisation of our social discourse, uncertainty teaches us to listen and to unlearn. There is empathy in vulnerability because otherwise, in trying to find ourselves mirrored in every second person, we inevitably fail to do so even in the best of our allies. In the end, we fall back upon well-rehearsed rhetoric of blame and one-upmanship.

And, it is here, in the certainties that it seeks, that cancel culture falters. When we judge without knowing, we deny ourselves empathy. The world has never been ideal, nor, even less so. Unless we learn to soften the angularities of our rage with grace, temper our insecurities with courtesy, the conversation will always end as a monologue—full of sound and fury, achieving little.

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LETTERS TO THE EDITOR

COUNTERING CHINA

THIS REFERS TO the article, 'India and democracy's ten' (IE, July 28). The rise of China as a superpower will not be a smooth one due to its expansionist and radical approach towards other nations. While the US is willing to make an "alliance" to counter the CCP, India must consider its pros and cons effectively to take the fullest advantage of the current Cold War like situation between the Washington DC and the Beijing. Though India will not be joining any alliance, it is as clarified by the external affairs minister, it may consider the US proposal of an alliance as a "coalition of democracies" to counter the CCP and its ideological rival.

Dalish Solanki, Delhi

NO, GOVERNOR

THIS REFERS TO the article, 'On a dark path' (IE, July 28). Rajasthan's political crisis highlights two exigent issues. One, the vile priorities of political parties in capturing power in the face of a deadly and unprecedented medical emergency. A similar game was witnessed in Madhya Pradesh with the toppling of the Kanai Nath government. Such tactics tend to undermine the Constitution. Second, the role of governor has been doubted given the dubious machinations deployed by him/her to bring the ruling party in the Union to power in the states. These incidences tend to erode the principle of federalism which

IDEAS ONLINE

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constitutes one of the "basic structure of the Constitution".

Sagar Ganesh Borade, Thane

ELDERLY MATTER

THIS REFERS TO the article, 'Woman abandoned by family finds an unlikely new home' (IE, July 26). The government has a duty to devise sustainable strategies to deal with issue of abandoned elderly people. This issue is pertinent in the times of the pandemic. The kindness of AAP MP Sanjay Singh should be praised but such personal gestures will not solve this longstanding problem. The need of the hour is immediate intervention by the government for providing basic necessities to such people.

Chandramaulika, Bhubaneswar



KABIR FIRAQUE

The beautiful people

Olivia de Havilland was one of the last of the greats of Hollywood's golden age

ever the studios' grip on actors.

From her life, that is the biggest takeaway. From her death, the big takeaway is sobering. The Golden Age of Hollywood is slipping away. Yes, we will always have the films. But the stars are mostly gone—with only respect left. Greta Garbo, for example, would have played the lead when talking pictures arrived (not de Havilland, who was 11 when the first sound film released in 1927) would have been at least 110 today if it were possible to live that long. Greta Garbo, for example, would have turned 115 this year. Those old enough to have played the lead towards the end of the Golden Age (mid-1960s or thereabouts) will now be at least in their 70s, and more likely in their 80s or 90s. Or gone already.

Ingrid Bergman and Bette Davis, de Havilland's closest friend in the industry, left in the 1980s. Barbara Stanwyck and Audrey Hepburn died in the 1990s. Gregory Peck and

Katharine Hepburn in the 2000s, and Elizabeth Taylor and Lauren Bacall in the following decade. Then Kirk Douglas and now de Havilland have left in the very beginning of the 2020s—both of them past 100.

How many are still with us? An online search throws up long lists that bring a false sense of relief. Most of the names, it turns out, are of actors who played smaller roles, or who were child actors during the Golden Age. Indeed, every link is vital in a vanishing chain, including Mickey Kuhn, now 87, who played Melanie's young son in GWTW 81 years ago. But it's the stars we want to count.

I found about a dozen names more familiar than others. Two of the bigger ones are Angela Lansbury and Jane Powell, both in their 90s now. Five others will be familiar to fans of Alfred Hitchcock—six if you count his daughter Patricia, now 92, who appeared in three of his films. Vera Miles, 90 is Marion Crane's sister from *Psycho* (1960) and Henry Fonda's disturbed wife from *The Wrong Man* (1956). Shirley MaLaure, 86, made her debut in Hitchcock's *The Trouble With Harry*

(1955). Tippi Hedren of *The Birds* (1962) and *Marnie* (1964) is now 90. Kim Novak of *Vertigo* (1958) is 87.

The most important among them is Eva Marie Saint, who turned 96 on July 4, three days after de Havilland turned 104. Saint was in Hitchcock's *North by Northwest* (1959) with Cary Grant (died 1986), and in Elia Kazan's *On the Waterfront* (1954) with Marlon Brando (died 2004). We saw Saint at the Oscars in 2018, as a presenter. Cherish these moments, for a day will come, inevitably, when we will have only their films.

De Havilland never did a Hitchcock film. Her sister Joan Fontaine (died 2013 at age 96) did two, winning an Academy nomination for *Rebecca* (1940) and bagging the award for *Suspicion* (1942). They remain the only siblings to have each won one or more Academy Awards. Joan got there first, beating Olivia in the 1942 race, but this is not the time to reflect on their famed sibling rivalry. For today, we only have their films.

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OF ALL THAT happened in her eventful life, Olivia de Havilland is best remembered for her role as Melanie Hamilton Wilkes in *Gone With the Wind* (1939). This is unfair for two reasons. Memorable as she is in GWTW, it is by no means her finest role. Her countless fans will point to the two roles that won her Academy Awards, the two others (besides the supporting role in GWTW) that won her nominations, and more. The second reason is that her legacy goes beyond her roles. Film historians, even law historians and labour activists, will point to the de Havilland Law.

De Havilland, who died this week at age 104, fought the system—and won. In 1943, when Hollywood's powerful studios controlled the fate of actors, Warner Brothers refused to let her go at the end of their seven-year contract. The studio tagged extra time to the contract to compensate for periods when she had not been working. She sued in a California court, leading to the landmark 1944 ruling—informatively known as the de Havilland Law—that the years in the contract mean calendar years. It loosened for-

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'Mismanagement' of solid waste

Urban Local Bodies are as much responsible as is the Housing and Urban Development Department in leaving the important issue of management of solid waste to sheer chance and gamble resulting in the absolute touchdown of any better, lasting and scientific disposal. Any measure taken in this respect has two vital aspects in so far as management of solid waste is concerned, one- it should be purely on modern and scientific manner and two- it should be on a permanent basis. Do we not expend more time in attending to preliminaries, formalities, paper work and series of meetings and the like in a bid to resolve an issue like the one under reference but when it is the ultimate thing of implementation, it is usually a damp squib. Delivery, application and execution of plans, decisions and resolutions keep on scrambling and finding ways with great difficulties but not without passage of considerable time. It could be said that several decisions, for instance, an important one taken by the Advisory Board in the case under reference for better management of solid waste, continue to remain confined to the papers and files only.

It may be recalled that an Advisory Board headed by Administrative Secretary of the Housing and Urban Development Department was constituted by the Government in the year 2017 primarily to ensure implementation of Solid Waste Management Rules in letter and spirit. The directions of the National Green Tribunal in this regard too were mandatorily to be implemented across the UT of Jammu and Kashmir, all in a time bound manner. It is fairly known that solid waste is generated everyday and needs to be managed in a way that it reduced rather eliminated the adverse impacts of waste materials on human beings, on their health and protected environment. This all was necessary for supporting economic development and better quality of life of the people. In this pursuit, all those officers comprising the Board were to give their advice to the Government for taking such measures that were necessary for expeditious implementation of the set rules. What is the use of taking too many decisions which were not followed closely for implementation? Who was, in fact, taking the issue quite casually other than the Housing and Urban Development Department which has to set in motion the implementation of decisions through the Municipalities and perform its supervisory role. The result is garbage and other waste material seen getting rotten at many places causing air pollution and water pollution at those places where it was dumped near the water bodies. Pertinent to note that though many Municipal bodies have identified landfill sites, however, continue to be not utilized and there was no coordination between the Housing and Urban Development Department and the Urban Local Bodies. Process of identifying and disposals of bio-degradable waste and non- bio- degradable waste still remains to be implemented. Open burning of waste material on roads and in lanes and in morning hours was adding to the health problems of the people towards which no attention was being paid.

A system of checks and balances in the instant case is missing in that no periodic reports in respect of the status of implementation process of the waste management are sent to the Jammu and Kashmir Pollution Control Board in the prescribed format and therefore, Directors of the ULBs appear to be ignorant of the Solid Management Rules 2016. What is needed rather desperately is feeling serious about the task of proper scientific and lasting management of solid waste. Efficient and economical refuse collection, recycling and then proper disposal services about the solid waste management is what should be seriously aimed at across the UT of Jammu and Kashmir without losing any further time so that any damage to the environment including land and water pollution, choking and obstruction of drains and loss of biodiversity could be arrested. We have the potential, promise and proficiency in abundance but will to do and do it in innovatively scrupulous way needs really a fair toning up exercise.

Contactless Railways tickets

Moving ahead with the changing times and ensuring more convenience to the travelling public, Indian Railways is introducing contactless ticketing for undertaking journeys including platform tickets just like being done at airports. These ticketswill come under QR code. Booking tickets on line shall undergo certain changes shortly with the introduction of a revamped IRCTC website. It is worth noting that with the launch of this website, searching and suggesting alternate trains will be there due to employment of an inbuilt "artificial intelligence"(AI). Taking a cue from the airlines ticketing system, a move to issue tickets in a single booking for connecting trains shall result in no problems in boarding connecting trains to reach a destination. This type of improvement in the technological convenience shall result in moving the artificial intelligence to assess demand for certain stations and destinations and timing of connecting trains shall be changed accordingly. Surely, this is passenger friendly step proposed to be taken by the Railway management. However this facility definitely will not be there for unserved and suburban train tickets. For QR codes, possessing smart phones is necessary.

Bhavana Singh

60 years earlier, Prime Minister Nehru disclosed in Parliament that "on 25 August, a strong Chinese detachment crossed into our territory in the Subansiri Frontier Division at a place south of Migyitun and opened fire... they were in some hundreds, 200 or 300, or may be even more, they surrounded a forward Indian picket consisting of twelve men and captured them. Eight of them escaped and returned to the outpost at Longti (NEFA/Arunachal Pradesh)". Sino-Indian relations were never the same again. The Galwan Faccot has brought back similar memories and the fear that bilateral relations may spiral down again. However the reaction from the leadership on both sides has been extremely different this time with statements from Modi being lauded in the Chinese media and the Chinese restraining from transgression after losing a high level officer. In his recent statements, Prime Minister Modi mentioned the Wuhan spirit and highlighted the need to avoid escalation. Ofcourse this is not as high on dramatics as 1965 when Atal Bihari Vajpayee drove 800 sheep and 59 yaks to the Chinese embassy in retaliation to their claim that Indian soldiers had stolen its sheep and yaks. But certainly the border clash both at Naku La and Galwan valley calls for a rethink in our policies of engagement and disengagement of border talks with our not so friendly neighbour.

In a rare gesture by the Chinese side, the leadership has accepted the number of casualties on the Chinese side though the figure remains dubious. The two sides have decided to disengage after the initial skirmishes but the process, as can be envisaged, is going to be a long drawn process. Both India and China will begin a 72-hour verification process to make sure each side has fulfilled the commitment before disengagement is initiated in continuation of the agreement between the special representatives of India and China, National Security Adviser Ajit Doval and Foreign

Minister Wang Yi, respectively. The two sides have agreed "earliest complete disengagement of the troops along the LAC and de-escalation from the India-China border areas for full restoration of peace and tranquillity". BJP general secretary Ram Madhav's statement that India must show the same assertiveness on the Line of Actual Control (LAC) with China as it has shown on the Line of Control (LoC) with Pakistan, simply to protect its "self-respect" and defend its land "will



the last inch" (25, June in The Statesman) well encapsulates the government stand.

The nature of India's response has been changing over the last few years due to repeated incursions on the border in all three sectors and also along international borders for instance Bhutan. This is also evident on India's response to Uri as well as Balakot. In a significant departure from its position of restraint, post the September 2016 attack on the army base in Uri, India decided to shed its first limitation. It took the war

across the Line of Control to strike at some forward launch pads used for infiltrating terrorists by their handlers in Pakistan. In responding to the Pulwama attack, India chose to shed the second limitation on the type of force. India retaliated on February 26 with surgical air strikes at the sprawling Jaish-e-Mohammed (JeM) training camp in Balakot. These gestures combined with their relative silence on the Desping Plains have apparently sent a signal that India is trying to

discuss the possibilities of disengagement from war, a bite from history might provide a possible solution to the current imbroglio. Considering the documents over the last few centuries, especially an account from A G Noorani in his book the "India-China Boundary Problem" (2011), it can be observed that most references to Tibet and Mongolia as a protectorate in various different languages were conceded as relatively independent. The problem started when China refused to sign the Simla agreement which wanted to put Tibet in a completely independent category which was not palatable to China. The solution however lies in a contemporary set of events where Mongolia gained a permanent solution to its sticky situation between Russia and China, whereby the division of Mongolia into Outer and Inner solved the boundary issue once and for all.

A similar division of the Tibetan territory into an Inner Tibet which would lie within the permanent jurisdiction of China and an outer one which would act as a buffer may provide a permanent solution to the territorial issue. Though an uphill task for the diplomatic plenipotentiaries, even a small step toward this direction would be of huge benefit to both nations instead of using economic blockade to immobilize each other. It is indeed time to materialise these ambitions rather than just simply letting the Chinese write another 1962.

While the officialsthe high level continue to discuss the possibilities of disengagement from war, a bite from history might provide a possible solution to the current imbroglio. Considering the documents over the last few centuries, especially an account from A G Noorani in his book the "India-China Boundary Problem" (2011), it can be observed that most references to Tibet and Mongolia as a protectorate in various different languages were conceded as relatively independent. The problem started when China refused to sign the Simla agreement which wanted to put Tibet in a completely independent category which was not palatable to China. The solution however lies in a contemporary set of events where Mongolia gained a permanent solution to its sticky situation between Russia and China, whereby the division of Mongolia into Outer and Inner solved the boundary issue once and for all.

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J&K: UT of enhanced Levy, Taxes & Fees

Chetan Prabhakar

Is it a time to increase financial burden of the people of UT of Jammu & Kashmir? The imposition of levy of User Fee on Public funded toll roads and imposing of new excise policy 20-21 enhancing tax on alcohol by 50% are going to increase the financial burden of the people of Jammu and Kashmir and that too, during the time when people are facing huge financial hardships.

Firstly, why do the Government of UT thinks that the people of Jammu & Kashmir are so irresponsible and unconscious vis-a-vis people of other states and UTs that it felt the need to enhance tax on alcohol by 50 percent on the MRP of liquor bottles in the UT of Jammu & Kashmir to make them more conscious of the harmful effect of consuming liquor? The concern of the Government is very bleak and stingy as it has been officially stated while passing the excise policy of 20-21 that 'the concern has been to optimize revenues from sale of liquor for 'common good' and at the same time, to bring about consciousness about harmful effects of consuming liquor and alcoholic beverages'.

Let us evaluate this statement on two bases, one, what 'common good' this enhancement of tax on alcohol is going to bring? The most alarming 'common good' will be that this policy is going to put more heavily on the people who consume alcohol, and this is going have adverse financial effect on their families' household expenses, which is already impacted due to COVID 19. If alcohol consumption is such a bad thing, then, at the first place, why is Government allowing the sale of liquor and trying to optimize the revenues from sale of liquor for 'common good'? What common good is it going to achieve? As a result

of this policy, the people will start drinking low-cost alcoholic drinks, to fit their budget, which will further affect their health. This will be the common good which is going to come by increasing the sin tax on the liquor and alcoholic beverages.

Second is, 'consciousness about harmful effects of consuming liquor and alcoholic beverages'. This seems to be a statement which has no meaning at all and what this means that only people of the UT of Jammu and Kashmir need to have

about the harmful effects of alcohol than people of other states and UTs.

It is not out of place to mention here that the common consciousness prevailing in the society to which the Government is far from. The people who drink; they drink the same amount of alcohol irrespective of rates. They just change their choices to fit their budget and also try to find other way to find cheap liquor and alcoholic beverages, and that give rise to the market of bootleggers and makers of adulterated liquor, which further increases the health hazards among people.

Are people of other UTs & states more conscious where the liquor is cheap and affordable, than the people of UT of J&K, where the government has increased the rate of liquor and alcoholic beverages way beyond the affordable reach of the public in general. Is it not an unconscious decision? If liquor and alcoholic beverages are made affordable, then the increase in the rate of liquor/alcoholic beverages and imposition of new user fee at toll plaza of J&K may be definitely going to increase the cost of living and put additional financial burden on the people of UT of Jammu & Kashmir.

In view thereof, the Government of UT of J&K needs to revisit this decision of enhancement of tax on alcohol by 50% which will serve no common good and it also does not seem prudent to say that increasing the cost will bring about consciousness about harmful effects of consuming liquor and alcoholic beverages. People are already aware and conscious about this fact. What people need in this particular time of crisis amid COVID 19 is financial security, stability and assistance and not increase in cost of living. The increase in the rate of liquor/alcoholic beverages and imposition of new user fee at toll plaza of J&K may be definitely going to increase the cost of living and put additional financial burden on the people of UT of Jammu & Kashmir.

The question here is; what has been the emergent need to start the levy of user fee on public funded toll road of Lakshampur, common road constructions which were started on 22nd February 2017, and that too at a juncture wherein the public at large is going through financial hardships due to huge economic slow-down amid the pandemic of COVID-19 and in the circumstances, this levy will also impact the fundamental right of the citizens to move freely throughout the territory of India as guaranteed under Article 19 of the Constitution of India.

In view thereof, the Government of UT of J&K needs to revisit this decision of enhancement of tax on alcohol by 50% which will serve no common good and it also does not seem prudent to say that increasing the cost will bring about consciousness about harmful effects of consuming liquor and alcoholic beverages. People are already aware and conscious about this fact. What people need in this particular time of crisis amid COVID 19 is financial security, stability and assistance and not increase in cost of living. The increase in the rate of liquor/alcoholic beverages and imposition of new user fee at toll plaza of J&K may be definitely going to increase the cost of living and put additional financial burden on the people of UT of Jammu & Kashmir.

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Living with the Floods

Bharat Jhunjhunwala

China is facing the worst floods in the last one hundred years despite having made the largest numbers of dams in the world. We too are facing floods in Bihar despite having arrested flood waters in the Tehri Dam. The reason is that we consider the rivers only as carriers of water and ignore their role as the carrier of sediments. We forget that the land mass from Haridwar to Kolkata has been made by the sediments brought by the Ganga. The water of the Ganga has been spreading all around for thousands of years and depositing the sediments. These sediments which have now become the soils of Uttara Pradesh, Bihar and West Bengal. Yet, floods also cause human suffering. Question is how should we deal with this?

Ganga has the highest load of sediment among the major rivers of the world. She deposits some sediments in her channel every year. These sediments are pushed to the sea during a major flood that comes in five or ten years and the channel is restored to its earlier depth and high capacity to carry water. However, we have stopped such major floods by making the Tehri Dam and removing the water from the Haridwar and Naraora Barrages for irrigation. As a result the sediments being deposited in her channel every year are no longer being pushed to the sea, the level of the channel is gradually rising, the Ganga's capacity to carry the flood

waters is getting reduced; and even a "small" flood now inundates the banks and cause huge damage as being seen in Bihar today. We have actually increased the flood fury by making the Tehri Dam.

The Farakka Barrage has velocity directly reduces the amount of water that she can carry to the sea; and reduction the depth of the channel further reduces the amount of water that she can carry. As a result, the floods in Bihar are increasing. Some scientists believe that the



sediments deposited in the riverbed would have got stabilized and hardened and the major floods may no longer be able to push the sediments to the sea by the river. In this way, we are putting our future generations in peril in our penchant of controlling the floods today.

Another difficult consequence of arresting the sediments in the Tehri Dam is that the sediments that would have reached the Sunderbans are no longer reaching there. This is leading to huge ero-

sion. The sea has a natural hunger for sediments and it begins to eat the land if it's hunger is not met. The erosion of Sunderbans is partly due to the rise in sea level due to global warming but also partly due to the deprivation of the inflow of sediments from the Ganga. It can be said that the Tehri Dam and Haridwar and Naraora Barrages are "eating" away the sacred land of the country by opening the path for the sea to eat our land. Indeed, the Tehri Dam is providing drinking water to Delhi and these barrages are providing irrigation and enhancing our food security—but at the cost of the sacred land of our country.

The engineers of Bihar are not behind. They have made number of embankments on the sides of the rivers. They wanted to restrict the flow of the river to their channel so that the flood waters did not spread and create havoc. The people were surely helped by the levees. But, the sediments brought by the rivers got deposited between the embankments and that is leading to the rise in the level of the river beds. The engineers raised the height of the embankment in parallel. Since the level of the riverbed became higher than the surrounding land, The river now flows above the ground like the Metro Rail. And, when the embankments break, as they necessarily have to sooner or later, then the water gushes out and inundates much larger area because the land between two rivers becomes like a bowl and the flood waters cannot now flow to the sea since their path-

ways are obstructed by the raised river courses.

We will have to learn to live with the floods. I had an occasion to study the floods in Gorkhalp in the nineties. Local people told me that previously the floods were welcome. Villages were made on raised lands and people lived safely in their houses during the floods. The flood waters used to flow like a sheet of water. They brought sediments that fertilized the soil. They used to grow certain varieties of paddy that increased in height as the flood waters rose. The floods would soon recede and they got not only paddy crops but fertilized soil for their rabi crop.

We will have to revert to this approach of 'living with the floods.' We will have to remove the dams, barrages and embankments. We can still obtain drinking water for Delhi and irrigation for our fields by undertaking groundwater recharge in the plains of Uttar Pradesh. The store about 76 billion cubic meters (cumecs) water in the ground water aquifers of UP. The 2.6 billion cumecs stored in the Tehri Dam is a pittance in comparison. However, the engineers love large toys like dams, barrages and embankments because of obvious reasons but these will only push us into deeper floods and human suffering. India and China have to choose between toys for our engineers and safety of our people and protection of the sacred land of our country.

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(The views expressed by the authors are their personal)

The
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— ESTABLISHED IN 1924 —

Rafale is a reminder

Focus on procurement and defence challenges

The unusual fanfare surrounding the arrival of five Rafale fighters from France is a cautionary tale at many levels. The first is the context of the border confrontation with China. So long as Beijing refuses to restore *status quo ante* along the Line of Actual Control, India must retain a degree of military readiness as a bargaining chip or as a contingency for further violence. Two, the Rafales represent the first strategically significant upgrade in India's air power in decades. While India is also fast-tracking the purchase of Russian MiGs and Sukhois, one has already been pensioned out of the arsenal and the other serves as a second stringer for the Chinese air force. Three, the importance attached to the Rafales and attempts to fast-track the subsequent batches is a reminder of the slowness of India's procurement system and the question marks over its indigenisation drive.

India had the luxury of putting defence procurement and reforms on the backburner. After all, it enjoyed military superiority against Pakistan, and had a military restraint understanding with China. The Balakot dogfights showed that, at best, India had technological parity with Pakistan. Galwan Valley has shown Beijing no longer feels the need to be constrained by the past 45 years. The Indian political system has been more concerned about accusations of scandals regarding arms purchases than what the weapons meant for national security. It is telling that the Rafales are the first tangible result of a fighter contract that was first unveiled in 2007. To its credit, the Narendra Modi government has implemented several defence reforms. But the gap has been its focus on weapons indigenisation, where the Make in India focus may not be adequate to address the quality needs of the armed forces. But with the changed security environment, the question has to be asked whether, in the case of offensive platforms, this priority makes sense.

The new paradigm means the services also need to relook at their earlier conventions. Networking allows militaries to get more accurate bang for their buck but barely exists in even the most primitive form in the Indian military. A host of new technologies means older formulae need a rethink. The advent of the armed drone, for example, means the original 42-squadron air force goal of the Indian Air Force may be obsolete. The times they are a-changing in dangerous ways and mindsets need to be a-changing as well.

India needs a robust EIA process

The government must take into account the criticism and improve the draft

On Monday, former environment minister and senior Congress leader, Jairam Ramesh, reiterated that the draft Environmental Impact Assessment (EIA), 2020 notification was not based on research, reduced public participation, and represented an attitude which viewed environmental regulation as an "unnecessary...burden", not as a means to ensure the welfare of people and sustainable development. Union minister of environment, forest and climate change, Prakash Javadekar, termed Mr Ramesh's comments "unfounded". But Mr Ramesh is not the only one with concerns. On July 10, 100 environmental researchers, activists, ecologists, conservationists, and former members of government bodies sent a letter to Mr Javadekar, critiquing the notification.

The critics claim that the draft EIA legitimises *post-facto* environment clearance; excludes major industries from the EIA process; subverts the public hearing process; reduces the scope of citizens to report violations, and fails to address a project's impact on wildlife, and habitats. This is mostly true. They also claim the draft fails to address the conflict of interest that arises from the fact that a project proponent can choose a consultant to do impact assessment, and the quality of composition of the expert appraisal committee, which is often staffed by those with no technical expertise. These, too, are valid objections.

Mr Javadekar has a critical role in protecting the environment and vulnerable communities. It is imperative that he patiently listens to the objections on the draft EIA, even if they are coming from Opposition party members. India deserves a robust EIA. This will be possible only if the consultative process is intense, rigorous and takes into account legitimate concerns.

What the Tenth Schedule signifies

Its underlying ethos is noble. But a new political context has made its relevance questionable



RISHAD CHOWDHURY

Recent events in Rajasthan have brought renewed focus on the Tenth Schedule and the scheme enshrined in that constitutional provision governing the disqualification of legislators who cross party lines. It's hard to avoid a sense of déjà vu as different versions of this political drama have played out in the past few years in Karnataka, in Madhya Pradesh and elsewhere.

The Tenth Schedule, originally inserted in the Indian Constitution in 1985, has a chequered history. But there appears to be a growing consensus that it has failed to achieve its objective of curbing opportunistic defections from one political party to another. A more accurate manner of putting it, perhaps, is that it has controlled or streamlined the permissible means of changing political allegiance midstream, and in a way, made it costlier in a crude transactional sense.

The Kihoto Hollohan judgment of the Supreme Court (SC) in 1992, in the course of upholding the constitutional scheme enshrined in the Tenth Schedule, highlighted the importance of political parties in the Indian democratic system. Members of Parliament (MPs) and Members of the Legislative Assembly (MLAs) are elected, in principle, if not always in fact, on the political and ideological platform of their party. So it is legitimate, the SC said, to hold them to that. They wish to

step away from that ideology, they are free to do so but must seek a fresh mandate from the people.

A constitutional amendment in 2003 significantly narrowed the permissible exceptions to this prohibition on party switching, effectively permitting legislators to escape disqualification only in the event that a minimum of two-thirds of the legislators chose to switch, rather than one-third as was the case with the original clause. It further sought to close other potential means of "compensating" defectors by also disqualifying such persons from holding any remunerative political posts within the government.

It is difficult to fault the underlying ethos of the Tenth Schedule, even if we fully accept the fact that it can often be circumvented one way or the other. However, looking more intently into its important characteristics of our polity, and to certain features that have assumed outsized importance in recent years, the virtues of the Tenth Schedule appear less than meritorious and its drawbacks, more so.

This constitutional mechanism, as the SC has recognised in its judgments, premised on the recognition of the political party as the fulcrum of the polity. In and of itself, this may be broadly correct. But the associated assumption that an elected legislator is a member of a political party will involve reasoned debate and deliberative decision-making with respect to defined electoral programmes and manifestoes, and the political backdrop has evolved significantly. In the 1980s, and arguably extending until the election of PM Modi, we witnessed an era of unstable coalition governments — the United Front governments, and then that of the first National Democratic Alliance and United Progressive Alliance.

In that era, the pragmatic objective of pro-



The Tenth Schedule is premised on a recognition of the political party as the fulcrum of the polity
MOH ZAKHARI PHOTO

Modi, the Bharatiya Janata Party (BJP) is equally dominated by his unrivalled popularity and broad national appeal. Examples can be cited at the regional level too: Mamata Banerjee in West Bengal, the Thackerays in Maharashtra, Mayawati in the context of the Bahujan Samaj Party.

National and state elections, in that sense, appear to have become quasi-presidential in nature. And so, while the tendency of civil masses of legislators to jump ship at crucial moments has not changed substantially since the enactment of the Tenth Schedule in 1985, the political backdrop has evolved significantly. In the 1980s, and arguably extending until the election of PM Modi, we witnessed an era of unstable coalition governments — the United Front governments, and then that of the first National Democratic Alliance and United Progressive Alliance.

In that era, the pragmatic objective of pro-

viding some stability to the coalition precariously stitched together would have further increased the perceived relevance of the Tenth Schedule.

Today, things look very different. The lack of intra-party democracy and the over-dominance of certain political leaders is only one aspect. The lack of public debate and reasoned decision-making on the most critical issues of the day is conspicuous. Polarisation and the proliferation of fake news on social media have only compounded the problem. In this radically changed political context, the broader argument being made today by former Rajasthan deputy chief minister Sachin Pilot — on the value of broken deals within political parties — has greater resonance. We need more startings within political parties, and within governments, too.

Consider the presidential primary contest in the United States, for example, where prospective nominees of the Republican and Democratic parties must necessarily engage in rigorous and extended state-by-state process before even emerging as a contender for the general election. Or, if it is felt that a proper analogy may be made only to parliamentary systems, take the intense contests for leadership in the prominent political parties in the United Kingdom.

The Tenth Schedule doesn't directly impede intra-party democracy or deliberative decision-making. The point is that the factors impeding the success of India's parliamentary democracy are less amenable to straining legislators (dubious though their motives might be) and more to deep-seated systemic challenges.

Respective of the Tenth Schedule, there are grave dangers these broader challenges pose to our democracy. These cannot be ignored.

Rishad Chowdhury is an advocate-on-record at the Supreme Court and former senior journalist. The views expressed are personal.

India must speak up for human rights at UNSC

By improving its own record, and speaking up against violations globally, New Delhi can provide leadership



MEENAKSHI GANGULY

When India joins the United Nations Security Council (UNSC) as a non-permanent member in January 2021, it will confront a range of issues. How can the UN help wind down conflicts in Syria, Yemen, and Afghanistan, while ensuring humanitarian aid for civilians and justice for wrongdoers? How can the UN help address the human rights impact, including structural racism and inequality, of the coronavirus pandemic?

Human rights groups have repeatedly criticised UN secretary-general António Guterres for his reluctance to rebuke powerful countries such as China, Russia, or the United States (US) for their human rights violations. In response, he initiated a "Call to Action on Human Rights" aimed at urging the UN and member-states to focus more attention on growing rights challenges. People facing oppression around the world will have high expectations of India to firmly defend their rights. The Indian government has said that on the Council, it would "act as a voice of reason and moderation and a firm believer in respect for international law."

Unfortunately, India's record on promoting respect for rights abroad is poor. At the UN Human Rights Council, India has usually abstained on country-specific resolutions. It has failed to support UN initiatives to address Myanmar's ethnic cleansing of the Rohingyas or Philippines' President Rodrigo Duterte's "drug war".

India has, at times, spoken, whether to support a call for accountability for alleged war crimes in Sri Lanka in the past, or recently, when it said that concerns around rights protections in Hong Kong should be considered "properly, seriously and objectively".

Human rights abuses are typically either a cause or effect of international crises on the Security Council's agenda. India is a significant contributor of UN peacekeepers to missions around the world and has aspirations of becoming a permanent member of an expanded Security Council. UN peacekeeping missions increasingly focus on monitoring, investigating, and reporting human rights abuses in post-conflict situations. India should demonstrate leadership and support, expanding such efforts.

WITH A PIVOTAL US ELECTION, AN INCREASINGLY BELLIGERENT CHINA, AND A WORLD IN CRISIS, EARLY 2021 WILL BE A KEY MOMENT FOR INDIA TO ALIGN ITSELF WITH THOSE WHO SUPPORT RIGHTS

To stand for rights abroad, India should also address its record at home. While it has long contrasted its more open society with China's one-party authoritarian State, the government has recently emboldened some of China's restrictions.

India's large number of expatriates, Internet shutdowns, and its league with Myanmar, Iran, and Zimbabwe. Despite a Supreme Court ruling that Internet communication is a fundamental freedom, access remains restricted in Jammu and Kashmir. Even during a lockdown to contain the spread of Covid-19, the Internet has become the primary means of information, communication, entertainment, education, and business, the authorities have not relaxed access to the strategically located Andaman Islands. Naval air stations INS Kohassa in Shulbarg and INS Baaz in Campbell Bay are reportedly having their runways extended to support operations by large aircraft, even as a 10-year infrastructure development "roll-on" plan — pegged at \$5,000 crore — is on fast track. Indian strategic commentators are even urging New Delhi to permit friendly foreign navies access to the ANI's military base.

The idea of militarising the Andaman Islands isn't new. Since the 1980s, Indian commentators have advocated building a strategic muscle at the ANI. What has often seemed like a straightforward choice for Indian policymakers, however, has never been an easy decision to make. On the matter of the strategic development of the Andamans, India's defence and foreign policy establishments have not always been on the same page. A section of India's diplomatic community has opposed militarising the ANI, arguing that turning the islands into a strategic military garrison would militarise the littoral — an outcome that would not sit well with countries in South and Southeast Asia.

When India first began developing the ANI in the mid-1980s, observers say Malaysia and Indonesia had been wary. Jakarta and Kuala Lumpur feared that India would use its military facilities in the ANI to dominate its region, and project power east of Malacca. In time, New Delhi's willingness to keep its security presence at the strategic islands at a minimum assuaged many in Asia that its motives were benign. Today, amid growing threats from China, New Delhi seems open to the idea of militarising the islands. But, many say opening the ANI's military facilities to foreign navies could still spook regional states.

There is also a geopolitical aspect to militarising the ANI. Since 2015, when the government had first announced its intention to transform the islands into a maritime hub, allocating ₹10,000 crores for the purpose — efforts to promote tourism and port development have largely been suspended. To improve tourism and trade potential, NITI Aayog has a plan to construct hotels, resorts and a trans-shipment hub at Campbell Bay. The flurry of recent infrastructure projects, environmentalists warn, could devastate the fragile ecology of the Andaman. Already many islands are facing significant damage from the climate crisis.

The proponents of the Andaman's militarisation point to a different kind of asymme-

Meenakshi Ganguly is South Asia director, Human Rights Watch. The views expressed are personal.

Militarising Andamans: The costs and the benefits

There is merit in collaborating with Indo-Pacific partners in the islands, but it will entail information-sharing too



AHLAJIT SINGH

The Ladakh stand-off with China has catalysed India's efforts to strengthen its military presence at the Andaman and Nicobar Islands (ANI). New Delhi recently moved to expedite plans for basing additional military forces, including facilities for additional warships, aircraft, missile batteries and infantry soldiers at the strategically located Andaman Islands. Naval air stations INS Kohassa in Shulbarg and INS Baaz in Campbell Bay are reportedly having their runways extended to support operations by large aircraft, even as a 10-year infrastructure development "roll-on" plan — pegged at \$5,000 crore — is on fast track. Indian strategic commentators are even urging New Delhi to permit friendly foreign navies access to the ANI's military base.

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The proponents of the Andaman's militarisation point to a different kind of asymme-

try. The apparent lack of reciprocity in India's bilateral logistics agreements with the Indian navy's plans to offer logistical support to partner navies does not, ostensibly, include the ANI facilities. Four years after signing a logistics pact with the United States (US), its navy ships still have no access to the ANI. France, Singapore, Australia — India's other logistics partners — too haven't had their warships repaired or replenished at Indian island facilities. With New Delhi unwilling to open up its island bases to foreign warships, observers say India's logistics arrangements have 1 per cent potential. To counter China's expanding footprint in India's sphere of maritime interest, militarisation advocates argue New Delhi must take a more aggressive stance. To counter China's Australia — India's other logistics partners — too haven't had their warships repaired or replenished at Indian island facilities. 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Digging deeper

With GST collections set to shrink, the Centre must find new ways to compensate States

Four months into FY2020-21, the Centre has finally managed to pay States the compensation due to them for the previous year under the GST regime. This may come as a breather for States seeking to finance efforts to ramp up public health-care capacity and contain COVID-19's detrimental effects on vulnerable sections. The last instalment of ₹13,806 crore for March 2020 was paid out recently, taking the total payments for the year to ₹1,65,302 crore. To refresh, States were guaranteed compensation from the Centre for the first five years of the new indirect tax regime introduced in July 2017, for the revenues they lost after the shift from the earlier system where States had the power to levy some indirect taxes on economic activity. This compensation assumed a 14% annual growth rate in a State's revenue, with 2015-16 as the base year, and was to be paid out from a compensation cess levied on top of the specified GST rate on luxury and sin goods. With growth down over the previous fiscal year even before the pandemic walled the economy, the assumptions of the not-too-distant past are beginning to hurt. Compensation cess under GST last year was almost ₹70,000 crore less than the payments due to States.

This gap is likely to enlarge further this year with expected economic contraction denting GST collections as well. Compensation cess inflows could shrink even more with people curbing discretionary spending on luxury goods in order to conserve capital or stay afloat in the pandemic-hit economy. A little over half of the shortfall in last year's cess kitty has been plugged by tapping cess balances from the first two years of GST implementation. The rest has been conjured up from the Consolidated Fund of India by debiting Integrated GST (IGST) funds that were lying with the Centre. IGST is levied on inter-State supply of goods and services and some of this levy collected in 2017-18 – the first year of GST when systems were still a tad ad-hoc – had not yet been allocated to States. Having thus drawn on these unintended contingent reserves, paying compensation to States this year is going to be even more daunting for the Centre. At the last GST Council meeting in June, Finance Minister Nirmala Sitharaman had said the Council would convene again in July just to discuss the possible alternatives to deal with this particular conundrum. The chief solution officials have been fleshing out is for the Centre to raise special loans against future GST cess accruals in order to help meet its compensation promise to States. There is no sign of that meeting being scheduled yet. That the pandemic's economic havoc has thrown up multiple challenges for North Block mandarins is understandable. As a third of the fiscal year almost over, it would help the Centre and the States to battle the virus more effectively if they had more certainty and clarity on the cash at their disposal.

The cost of haste

Regulators of drugs and vaccines

should not have to sign off on low-pass filters

So far-reaching are the effects of COVID-19 that it has harried drug regulatory authorities, usually the most risk-averse within the bureaucracy. 'Do no harm' is the driving principle of drug regulation and this is reflected in the thicket of documents and permissions that stand before the average novel drug or vaccine, for a chance at making it to the market. However, SARS-CoV-2, while mostly non-lethal, kills across demographics and age-groups to confound sophisticated care systems. This has sent a signal to drug companies, biomedical firms and governments to scramble for anything with even the slightest chance of success. It is in this context that regulators, used to long timelines of testing new vaccines or drugs, are now under pressure to facilitate a solution rather than stick to weighing and dwelling on evidence of efficacy and safety. India's drug regulatory authority as well as the Department of Biotechnology, which also funds vaccine development and drug research, now collaborate on fast-tracking. For instance, if an Indian company has partnered with a foreign one in developing a vaccine, then any trials already conducted by the foreign unit would be considered in allowing Indian companies to avoid repeating them in India. For drugs, those that have been proven to be safe for treating one disease may skip a fresh, large human trial, or a phase 3 trial. Potential vaccines too are now allowed to combine stages of trials – normally, regulators must approve results of each stage – to permit those testing the drug to move to the next stage. The rush to compress timelines, in itself, is no guarantee that a workable vaccine or reliable drug will emerge any faster. Drugs and vaccine-development have historically been expensive because immunology is a complex, eternal struggle with disease, and with high failures.

There have been instances when disease mortality is so high that not offering even a half-baked drug or a vaccine would be unethical. That is a call regulators have to constantly take. But not all emergencies are the same. There is now a situation, as in the case of Ebola, where a pox-like disease repurposed for COVID-19, where the drug regulator has approved it for emergency use but the COVID-19 task force has expressed its reservations. Such dissonance among experts is unacceptable especially when they all have access to the same evidence. There is a tendency to view COVID-19 vaccine development or a new drug as a 'race' in which only the first vaccine to be out matters. Historically, vaccines, even those targeting the same disease, only get better over time. Will COVID-19 continuously linger as an endemic disease or will it mutate into oblivion? If it is the former, scientists can continue to work on better drugs or improved vaccines. Haste does not aid science.

Adopting a public systems approach to COVID-19

Right now, India's public health infrastructure and its responsiveness should be the principal concern of the government



PULAPURE BALAKRISHNAN

The progress of COVID-19 in India varies across States. The virus is now spreading more rapidly in southern India including States which had earlier received worldwide attention for 'flattening the curve'. The surge in Kerala has not yet led to an appreciable increase in the mortality rate though. At the other end of the spectrum, Maharashtra and Delhi have slowed the rate of growth of cases but have registered higher mortality rates than most States. Gujarat is no longer the national epicentre but has registered the highest mortality rate of all. Maharashtra, Delhi and Gujarat are among the wealthiest regions of the country. It would seem from this that for a society, wealth is not necessarily health, leading us to surmise that the relation between them is mediated by something else, possibly the availability of public goods.

Characteristics and provision
A public good has the characteristic that it is accessible to all. Clean and sanitised public spaces, made possible by deploying a society's public health infrastructure, are a perfect example of a public good. The isolation and quarantining of infected persons implemented by a public agency would be another. In both these cases, members of a society benefit from the existence of a public good, which secures their health without having to pay for it, at least not directly. However,

this characteristic has implications for public goods provision. The feature that it does not exclude makes it unlikely that the private sector, motivated as it is by profit, will supply the necessary health infrastructure in sufficient quantity and at prices affordable to all. So, public goods would have to be publicly provided.

Two States of India where the existence of a relatively better public health infrastructure has diluted the impact of COVID-19 are Goa and Kerala. Goa has one of the lowest mortality rates in the country outside northeast India. Kerala has recorded a slightly higher death rate but also had faced greater challenges early on with travellers returning from the hotspots of the world, namely Wuhan (China), Italy and the United Arab Emirates. Subsequently, the trickling in of emigrants turned into a rush. The number of cases rose in the State, as said, the death rate did not rise significantly. It may be mentioned that the public health infrastructure is to be understood as comprising hospitals and medical personnel. In a crisis, the role of the latter is perhaps more important. And, 'personnel' are more than just doctors. It includes nurses, health assistants, laboratory technicians and sanitation workers.

Infrastructure and outcome
Health outcomes are the result of an interaction of forces ranging from the level of expertise of health personnel to the civic sense of a population. The latter is manifested mainly in the willingness of the public to cooperate with the drive against the disease by using masks and adopting social distancing in public. However, we have reason to believe that the existence



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of a well-functioning public health infrastructure is central. This can be seen from its distribution across various States. As the measure of infection is directly related to the extent of testing, it is safer to rely on the mortality rate as the indicator of resistance to COVID-19. Now, outside the north-east, where many States have remained relatively uncashed, Maharashtra and Gujarat have recorded among the highest mortality rates and Goa and Kerala among the lowest. As of June 25, the number of Health data show Maharashtra and Gujarat with mortality rates that are six and eight times, respectively, that of Kerala's.

We can see a relationship between basic indicators of the level of public health infrastructure and mortality in these two sets of States. Take the per person availability of allopathic doctors, hospitals and beds in the public sector. In each of these categories, Maharashtra and Gujarat do much worse than Goa and Kerala. Goa does better than Kerala on all indicators other than hospitals per person, registering a lower mortality rate.

Even though much more research is needed to establish the link between the public health infrastructure, the observed association between it and a population's resilience in the face of COVID-19 is striking. It is important to understand that there is nothing inevitable

about the sparseness of the public health infrastructure in Maharashtra and Gujarat. It is just that they chose to devote a far lower share of their national income to public health, despite their higher aggregate and per capita incomes compared to some other States.

So, States of India harbouring greater wealth than most have registered a higher mortality rate from COVID-19 even as some with far less have succeeded in containing them. In a way, the former face challenges that the latter mostly do not – mainly crowded urban spaces where social distancing is not possible. However, it is likely that their weaker public health infrastructure left them less resilient to the epidemic, resulting in higher mortality. Clearly wealth is not always health; when an epidemic strikes public capital in the form of a strong health infrastructure is.

Poor utilisation
We would however be advised to go beyond a focus on physical assets, such as hospitals and ventilators alone if we are to understand what determines a society's resilience to an epidemic. It has long been recognised that 'how you use' can matter more than 'how much you have' when it comes to any asset, particularly public capital. We may have only of late started worrying about our public health infrastructure but we have for long been aware that much of India's publicly created infrastructure is poorly utilised. In particular the vast sums spent on irrigation have not resulted in commensurate expansion of the area irrigated, at least in a truly functional sense. That this is a valid concern is evident when we note that Goa spends no greater a

share of its domestic product on health than Gujarat does but results in a much lower mortality rate. It suggests that the same amount of government expenditure can go much further with better stewardship.

A public systems approach is needed to first understand and then to address situations such as the one we are now facing as the epidemic swirls about us. It takes into account both the physical resources available in the public domain and the practices adopted in governing their use. Every day we are reminded of the lapses in these practices. And death is not the only impact of COVID-19. There is also the distress it unleashes upon the living and the trauma that results from it. We read of bodies left beside patients in a prominent public hospital in Mumbai, of a man trying to revive his mother by himself in an isolation ward of a government hospital in Agartala, of a woman giving birth in an autorickshaw as she was refused admission to several hospitals, including a government one, in Bengaluru (out of the unverified fear that she may be a spreader of COVID-19), and of a stigmatised crematorium at Delhi's Nigambodhi Ghat. Not all of this necessarily reflects the negligence of the public health infrastructure and its responsiveness should be the principal concern of the government. Adopting a public systems approach to the problem is the key.

Pulapure Balakrishnan is professor of Ashoka University, Sonapat. With inputs from Sreemath Nambodhary, academic associate of IIM Kozhikode.

RIC, a triangle that is still important

Calls for a westward shift in India's foreign policy appear misplaced as engagement with Russia and China does matter



P.S. RAGHAVAN

Last month, on June 23, a few eyebrows were raised when India decided to attend a (virtual) meeting of the Foreign Ministers of Russia, India and China (RIC). Amid the tensions on the line of Actual Control, the dominant calls were for a more decisive westward shift in India's foreign policy. A RIC meeting seemed incongruous in this setting.

The leaders' statements at the meeting reflected their divergent preoccupations. The Chinese Minister did not see the irony in his call for opposing bullying practices, rejecting power politics and supporting the rule of law in international relations. Russia's Foreign Minister Sergey Lavrov criticised unilateral coercive measures to settle scores with geopolitical rivals and topple regimes. India's External Affairs Minister S. Jaishankar pointedly emphasised that for a durable world order, major powers should respect international law and recognise the legitimate interest of partners.

Subtext to India-U.S. ties
Simultaneously, India's relations with the U.S. surged, encompassing trade and investment, a large-scale nuclear deal and a burgeoning defence relationship that met India's objective of diversifying military acquisitions away from a near-total dependence on Russia. There was a strategic subtext: as China was rapidly emerging as a challenger to its global pre-eminence, the U.S. saw value in partnering with a democratic India in Asia. Former U.S. Secretary of State and National Security Adviser Condoleezza Rice writes about this in her memoir.

The initial years
When the RIC dialogue commenced in the early 2000s, the three countries were positioning themselves for a transition from a bipolar to a multipolar world order. It was not an anti-U.S. construct; all three countries considered their relationship with the United States an essential prop to their global ambitions. The RIC

shared some non-West (as distinct from anti-West) perspectives on the global order, such as an emphasis on sovereignty and territorial integrity, impatience with hostilities, social policies, and opposition to regime change from abroad. Their support for democratisation of the global economic and financial architecture moved to the side of the RIC (with the addition of Brazil).

The initial years of the RIC dialogue coincided with an upswing in India's relations with Russia and China. The advent of President Vladimir Putin reinforced the political, defence and energy pillars of the India-Russia strategic partnership. With China, the 2003 decision to bring a political approach to the boundary dispute and to develop other cooperation, encouraged a multi-sectoral surge in relations. An agreement in 2005, identifying political parameters applicable in an eventual border settlement, implicitly recognised India's interests in Arunachal Pradesh.

Links in the grouping
Having noted this, the Russia-India-China engagement still has significance. India is the Shanghai Cooperation Organization (SCO), which is driven by Russia and China and includes four Central Asian countries. Central Asia is strategically located; bordering our turbulent neighbourhood. A sliver of



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environment impacted on these political equations. Among other irritants, China went back on the 2005 agreement, launched the China-Pakistan Economic Corridor, worked to undermine India's influence in its neighbourhood and expanded its military and economic presence in the Indian Ocean.

The texture of the relationship with Russia also changed, as India-U.S. collaboration widened – in 2014 (after the Indo-Pacific: As U.S.-Russia relations imploded in 2014 (after the annexation/accession of Crimea), Russia's pushback against the U.S. included cultivating the Taliban in Afghanistan and enlisting Pakistan's support for it. The western campaign to isolate Russia drove it into a much closer embrace of China – particularly in defence cooperation – than their history of strategic rivalry should have permitted. Thus, the RIC claim of overlapping or similar approaches to key international issues, sounds hollow today.

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.

LETTERS TO THE EDITOR

India's diplomacy

Routine ceremonial warmth and hugs in international capitals were mistaken for growing international leadership for its leader. Domestically, they were held up as special relationships crafted by a dynamic new dispensation. Basic conflicts of interest were sought to be dissolved in personal relationships. Deteriorating ties with China and Pakistan have clearly exposed the futility of this superficial approach and the need for anchoring policies based on stark geopolitical realities. Closer identification with an unpredictable U.S.

President has definitely been counter-productive. A foreign Minister with consummate diplomatic skills appears to be neutralised by an overbearing PMO. It is time to shed the illusion of grandeur and go back to drawing board (Editorial note: "Need a map for India's foreign policy", July 28).

MANOHAR ALENBATH,
Kannur, Kerala

■ I have had to re-think my supportive outlook on the moves on the Citizenship (Amendment) Act and on Article 370. Though from a nationalistic point of view both decisions seem bold

and much needed, when it comes to the strategic aspect, especially with reference to our foreign policy, perhaps there is a need to reconsider the steps taken. That said, there may be two ways of looking at this. Too much of multilateralism by previous governments may have led 'nationalistic' citizens to develop a mindset of 'enough is enough' and look for strong unilateral policy by the government. This explains the instant popularity of both the measures mentioned above. But then such bold decisions need to be backed by the strong foundation of our economy, at least as long as

we remain a rising power. Nations such as China only respect strength. Though it may be necessary and also emotionally satisfying to say that we care two hoots about some of our neighbours, and that we are in command, it might be worthwhile to analyse whether we have the back-up to handle their hostility.

KRISHNARAJ KENADATH,
Guruvayoor, Kerala

■ Current foreign policy with frequent informal summits does not seem to work and we appear to have problems with every country with whom we share a common border. The Nehru-Gandhi policy was based on "one

world" and when Nehru spoke "tryst with destiny", he did not blame the British but looked at broader issues. In contrast, the current government seems to blame the previous government for all its problems. Let us not forget that India provided leadership as the voice of the voiceless.

JAMES ARUNTHAKIRI WILLIAMS,
Bengaluru

EIA notification
It is shocking to know that the Environment Ministry is

CORRECTIONS & CLARIFICATIONS:
Error in "Viral tracker" (Front-page graphic, July 27, 2020): The fresh cases added for Andhra Pradesh was given as 8,257. The actual number was 7,627.

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trying to bulldoze through the new Environment Impact Assessment (EIA) Notification (Editorial, July 28). A brute majority in Parliament is not a licence to do away with meaningful dialogue. Any damage done to the nation's wellbeing is irreversible. The checks and balances built in the existing notifications should not be altered for short-term gains.

R. RAJAGOPAL,
Chennai

Meeting China's intransigence with air power

The IAF's forward posture is key to India's capability to bargain at the diplomatic table and prevent war



MANMOHAN BAHADUR

Why would a nation heading towards world power status gamble men, money and reputation for a few square kilometres of inhospitable terrain? Surely, it would have envisioned, and planned, for an end state and a definition of what would constitute victory for it – especially when the world is grappling with a pandemic and any strong-arm tactics would be frowned upon by all. For a few square kilometres only? No. As a popular dialogue of a Hindi film goes, "Picture abhi baaki hai (the film isn't over)".

India's ambitions

Professor Lawrence Freedman wrote in *Strategy: A History* that over the years, "strategy became a commodity, a distinctive product concerning a complex situation." The situation is indeed not simple on the India-China frontier, and if the Chinese strategists had read the yearly reports of India's Ministry of Defence (MoD), they would have realised that China is not the only country whose world view is expanding; India's is too. The MoD's 2002-03 annual report defined India's area of strategic interest as being "...from the Persian Gulf in the west to the Straits of Malacca in the east and from the Central Asian Republics in the north to near the equator in the south..." This expanded over the years. The 2012-13 version said, "India's size and strategic location... links its security environment with the extended neighbourhood particularly with neighbouring countries and the regions of West Central Asia, South East Asia, East Asia and the Indian Ocean." The 2018-19 version mentions that India has deepened its relations with a host of countries in almost all regions and those in the Indian Ocean and Indo-Pacific region. It mentions Pakistan as a country of concern while for China the assessment is, "Relations with China moved towards greater stability in the overall context of Closer Development Partnership". While Beijing misread New Delhi's



"It will take time for the Rafale aircraft to be integrated with other weapon systems." The first batch of Rafale aircraft prepares to take off from the Dassault Aviation Facility, Merignac, in France, to India on July 27. ♦♦♦

ambitions, India's security planners too stumbled in their assessment of an expansive China, as seen in the logjam on our northern frontier.

As politicians prepare the public in India for a protracted face-off, the serious border flare-up is on the backburner in the media and public consciousness. However, the Indian Army and the Indian Air Force (IAF) are preparing for the long haul. What could be China's game plan and what does India's air power get to the table to oppose it? It's certainly much more than the soon-to-arrive Rafale.

Influence of air power

The world has acknowledged that China has arrived on the world stage economically, as also politically by using its economic lift. There is only one aspect left to seal its credentials as a world power: military prowess. Despite the propaganda blitz of its armament industry, there is still the belief that China's equipment is suspect, its military inexperienced, and the Chinese soldier a poor fighter. So, while Galwan Valley, Pangong Tso and Yijuncheon have their place in the strategic scheme of things, the bigger picture could be that China is building up to a 'Gulf War++' media speculation to show that it has arrived as a military power not to be trifled with. To ascribe its belligerence to what being spooked by India's border infrastructure build-up or as a counter to the dilution of Article 370 is being impractical as Beijing is not naive to believe that these can be reversed. And as it procrastinates vis-à-vis the agreed de-escalation protocols, one is reminded of such means. But what

at Galwan in July 1962, only for a full-scale assault to happen later in October that year. While India is stocking up for the winter for the additional troops who have been sent in, it is a fact that the post-November period is bad from the connectivity angle for the Army. On the other hand, for the Chinese, this is not the case due to their developed road infrastructure. Our guard needs to stay up, led by Indian air power which would be the counter to any attempted 'Gulf War++'.

Airpower has a 'virtual' nature. Unlike Army formations whose ground positions can be marked on a map, its influence exists in multiple rings representing strike ranges, which encompass a considerable portion of the area of action. In any present-day war, dominance in air is a pre-requisite; the trick is in applying it in the strategic environment during the pre-shooting phase and tactically when the balloon goes up. What endears it to the government is its ability to give the politician the power to implement his ideas, at a place far removed in space and without serious constraint of the physical. That endears it to the government is its ability to give the politician the power to implement his ideas, at a place far removed in space and without serious constraint of the physical. That endears it to the government is its ability to give the politician the power to implement his ideas, at a place far removed in space and without serious constraint of the physical.

Politicians need to be reminded of what a French General, Le Comte de Guibert, said in the 18th Century: "To declaim against war... is to be beat the air with vain sounds, for ambitious rulers will certainly not be restrained by such means. But what

may result... is to extinguish little by little the military spirit... and some day to deliver up one's own nation, softened and disarmed or... badly armed... to the yoke of warlike nations which may be less civilised but which have more judgment and prudence." Does this apply to the neglect of successive governments towards equipping our armed forces such that the arrival of the Rafale is giving it the halo of a saviour?

Three options

Sections of the media are going overboard, as if the Rafale would be a panacea to the intransigence of the Chinese. Far from it, since there will be a time period required for its integration with other weapon systems that constitute a war-fighting package. That said, it is also true that the IAF would fast-track it as it sports capabilities that India's adversaries would have to use extra diligence to counter. The forward posture adopted by the IAF (even sans Rafale), which does not necessarily mean forward deployment, is key to India's capability to bargain at the diplomatic table. We have three options: First, prevent war, if possible. This may require give and take and will entail political costs. We have ourselves to blame for having reduced our deterrence quotient and having failed to discern the adversary's intentions in time – intelligence failure, in plain speak. Second, if pushed to the wall, fight hard to deny them their notion of victory for which they have gambled so much; rest assured, we will prevail. And last, if war is averted, use the time to build capability for it's no longer a choice between guns and butter if we want to avoid these regular falls alphas. The world, especially the neighbourhood, is watching how the elephant responds to the dragon in the coming months.

Postscript. Next time, to honour mutual protocols of not using weapons, the Chinese will not field nail-studded batons and baseball bats. Indian troops may be met with "non-lethal" weapons like lasers, laser dazzlers and ultra-sonic guns. One hopes India's planners are thinking ahead to avoid surprises and equipping our warriors suitably.

Mannohan Bahadur, a retired Air Vice Marshal, is Additional Director General, Centre for Air Power Studies. Views are personal

The South Asian migrant crisis

The South Asian labour force forms the backbone of the Gulf economies, but has no social security protection or labour rights



S. IRUDAYA RAJAN
& GINI ZACHARIA OOMMEN

In early July, the Kerala High Court issued notice to the Central and State governments on a petition seeking to set up a mechanism to assist NRIs who had lost their jobs abroad and had returned to India, to seek due compensation. The petition exposes the precarious conditions of migrant workers in the Gulf Cooperation Council (GCC) countries. Employers, particularly construction companies, have used the crisis as an opportunity to renege on promises of migrant workers without paying them wages or allowances.

Living in misery

The South Asia-Gulf migration corridor is among the largest in the world. South Asians account for nearly 15 million in the Gulf. The South Asian labour force forms the backbone of the Gulf economies, but has had to go knocking on doors for food and other basic necessities. The pandemic, the shutdown of companies, the tightening of borders, and the exploitative nature of the Kafala sponsorship system have all aggravated the misery of South Asian migrant workers. They have no safety net, social security protection, welfare mechanisms, or labour rights. The events are reminiscent of the plight of migrant labourers who had been evacuated during the Iraqi invasion of Kuwait in 1990, as we found during our field research in Kuwait a while ago. In the initial days of the lockdown, the Kerala government was requested to send regular medicines for lifestyle diseases. Since medicines are expensive in the GCC countries, migrants often procure them from India. However, the suspension of flights caused an acute shortage of medicines, and exposed the frail medical insurance system. Now, thousands have returned home empty-handed from the host countries.

Indians constitute the largest segment of the South Asian workforce. Gulf migration is predominantly a male-driven phenomenon. A majority of the migrants are single men living in congested labour camps. They share rooms and toilets, to save earnings to send back home. The COVID-19 spike in these labour camps has mainly been due to overcrowded and unsanitary living conditions. However, as the COVID-19 crisis and response unfolded in the Gulf countries, the

most neglected segment turned out to be the migrant women domestic workers, whose untold miseries have increased in the present volatile situation. The Indian missions, with their inadequate administrative personnel, could not adequately cater to the needs of the migrants. The situation forced the Indian government to repatriate the NRIs through the Vande Bharat Mission. The Indian government has repatriated over 7.88 lakh NRIs from various destinations: Pakistan, Bangladesh, Nepal, Sri Lanka, etc. have also been repatriating their citizens.

Rehabilitate, reintegrate, and resettlement

The countries of origin are now faced with the challenge of rehabilitating, reintegrating, and resettling these migrant workers. To facilitate this, the Indian government has announced 'SWADES' for skill mapping of citizens returning from abroad, but implementation seems uncertain. Kerala, the largest beneficiary of international migration, has announced 'Dream Kerala' to utilise the multifaceted resources of the migrants. Bangladesh has announced a special package for the resettlement of return migrants which includes money on arrival, money to launch self-employment projects, and compensation for the families of those who died abroad from COVID-19. The Overseas Employment Corporation in Pakistan has come out with special programmes to upgrade the skills of returnees.

Meanwhile, in the migration corridor, the movement for nationalisation of labour and the anti-migrant sentiment have peaked. Countries like Oman and Saudi Arabia have provided subsidies to private companies to prevent native lay-offs. However, the nationalisation process is not going to be smooth given the stigma attached to certain jobs and the influence of 'royal sheikh culture'.

Paradoxically, countries that are sending migrant workers abroad are caught between the promotion of migration, on the one hand, and the protection of migrant rights in increasingly hostile countries receiving migrants, on the other. The need of the hour is a comprehensive migration management system for countries that send workers as well as those that receive them. No South Asian country except Sri Lanka has an adequate migration policy. The pandemic has given us an opportunity to review the rights of South Asian migrants and to bring the South Asia-Gulf migration corridor within the ambit of SAARC, the ILO, and UN conventions.

S. Irudaya Rajan is Professor at the Centre for Development Studies, Thiruvananthapuram, and Gini Zacharia Oommen is a Member of the Kerala Public Service Commission

Protecting artists and the arts

This is an opportunity to create a cultural economy that helps performers move away from agriculture

PRAGYA TIWARI

The sheer diversity and excellence of fine arts, performance arts and crafts in India is mind-boggling. But on paper the creative economy does not exist. There are neither authoritative definitions nor data on the size or shape of it. Social and economic policies are made without regard to their impact on the creative economy and those who depend on it.

A recent report, "Taking the Temperature", by the British Council in association with FICCI and Art X, spoke of how the pandemic and its aftermath have impacted the creative economy. As per the report, MSMEs, which have taken a beating due to the lockdown, make up 88% of the events and entertainment management sector saw 90% of their events cancelled, and 61% of organisations established between four and 10 years ago have stopped functioning.

This is a sector that struggles for the most part even in the best of times. State support for arts and culture is abysmal. The scale at which the average cultural organisation is forced to operate due to infrastructural shortcomings makes it nearly impossible to ensure profit margins. Support from the private sector is unreliable and insufficient – further compromised by rigid CSR rules that make it difficult to justify donations in this area. This has stifled experimentation and innovation in the arts as well as preservation of heritage.

Furthermore, the report only presents part of the picture. A large section of artists and artisans are part of the informal economy. Some of them depend on agriculture to supplement their income for part of the year. With rural wages already very low, they are fighting for mere survival.

A list of recommendations

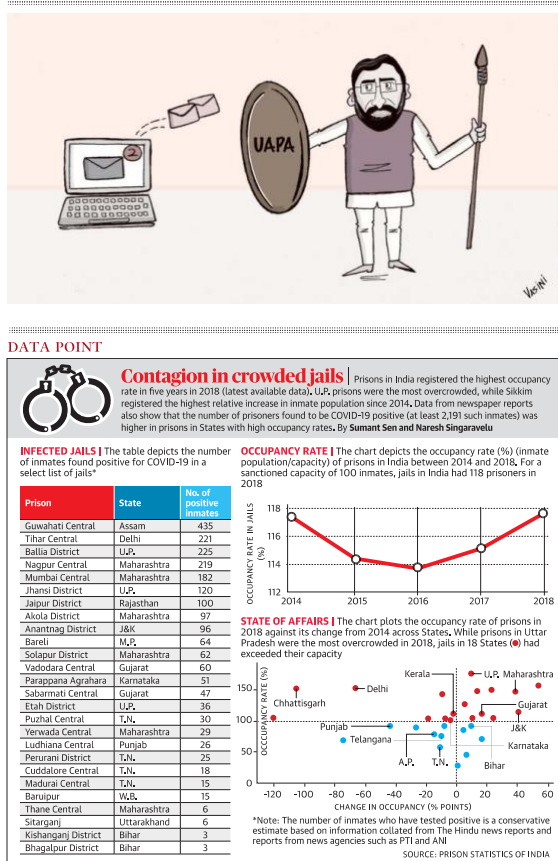
FICCI has sent a list of recommendations to the Ministry of Culture that can go a long way in mitigating the damage. Amongst them are releasing grants that are pending since 2017, despite being approved; diverting the budgets already allocated for state-

sponsored cultural festivals to help artists in need; ensuring health coverage to artists under Ayushman Bharat or the Central Government Health Scheme; moratoriums on GST payments; and investing in digital infrastructures that can help artists take their work online. These are achievable targets, yet the Central government and most State governments have been unresponsive. That said, often artists fail to receive whatever little is allotted to them.

In 2015, as part of voluntary work I did with folk musicians, I travelled with a group of Kabbala performers to the Collectorate in Jaisalmer. They were seeking certificates that allow them to access meagre welfare benefits. In a Kafkaseque turn they were told that they could not be given the certificate until they prove they really are Kabbalas. We returned the next day with wind instruments and snakes to put up a performance – their musical heritage being the only proof of their identity. The officials did not relent. "How do we know they are not Nath Jogis? They also have snakes but they are OBGs, not STs," I was told. I wondered then: What prevents these people from moving to the city to look for a better source of sustenance? However, as the pandemic has underlined, cities might not be the promised land for most migrant workers.

In these circumstances, there is a real opportunity to create a cultural economy that helps millions of performers move away from agriculture and sustain themselves without having to migrate for temporary jobs. This is but one of the innumerable ways in which nurturing the creative arts can help strengthen India's economy. It can also simultaneously bolster our soft power. But beyond utilitarian goals lies a far more fundamental need. The very comprehension and articulation of our collective identities, aspirations, tragedies, bliss, and potential depends on the survival of the arts. If we lose our artists, a million temples and trillions worth of economic growth will fail to make us whole again.

Pragya Tiwari is a freelance journalist and editor of the Indian Policy Collective and Indian History Collective



The Hindu

FROM THE ARCHIVES

FIFTY YEARS AGO JULY 29, 1970

The rich sands of Sahara

The people of Morocco have given their overwhelming approval to the Constitution drawn up by King Hassan. Though it signifies a return to a democratic form of government the king will continue to be the real fountain of power as he has been since he succeeded his father, King Mohammed whose prestige with his people had been high because he had spearheaded the nationalist movement against the French. By recognising Mauritania, the king has improved his relations with a neighbour against whom he had been making enormous territorial claims. The two Governments have now exchanged ambassadors. A similar Moroccan claim to the Tindouf mines in Algeria has also been given up in an agreement which, however, envisages a partnership of the two countries in exploiting these valuable deposits and exporting them through the Moroccan port of Agadir. King Hassan, President Boumedienne of Algeria and President Ould Daddah of Mauritania are planning a joint strategy against Spain which refuses to quit Spanish Sahara and the enclaves of Ceuta and Melilla in Morocco.

A HUNDRED YEARS AGO JULY 29, 1920

National territorial force

(From an editorial)

Despite occasional protests to the contrary, the Government of India appear to be very hailing in the matter of the Moroccan port of Agadir. King Hassan, President Boumedienne of Algeria and President Ould Daddah of Mauritania are planning a joint strategy against Spain which refuses to quit Spanish Sahara and the enclaves of Ceuta and Melilla in Morocco. The press commentary is not a model of comprehensive exposition, but it shows that the Esher Committee have recommended a system of national militia. What other recommendations the Committee have made, it does not transpire. Government's military policy in the past, although it involves important principles of finance and the question of national self-respect, has been kept a closed secret. The Nicholson Committee's recommendations resulted in the rise of our military expenditure almost to half our total revenue. We get no insight from the communiqué as to what the bearing of the recommendations of the Esher Committee is on the future of the country. The hurrying up of the formation of a huge white militia and the retardation of the development of a national one gives us little reason to be optimistic in the matter.

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OUR VIEW

MY VIEW | ARTHANOMICS



The spearhead of India's Air Force is finally here

The delivery of Rafale jets will enhance the country's ability to deter external aggression. Lethal as these French fighter aircraft are, HAL must ramp up the production of Tejas too

Described as "both beauty and beast" by India's envoy to France, the Rafale fighter aircraft is finally set for induction by the Indian Air Force. Of the 36 ordered in 2016, the first lot of five planes took off on Monday from Bordeaux and are expected to land at our Ambala base on Wednesday. This is about nine months off schedule and their technical induction could take a few weeks more, but they can still give our defences a boost just as Chinese aggression lends urgency to the need to be prepared for a two-front war with both our regional adversaries, China and Pakistan. The Centre hopes that the rest of the deliveries follow in quick order, by 2021-end, ahead of the original schedule of mid-2022. Until then, we could rely on the advanced combat capabilities of just a few to deter external aggression. Defence analysts have argued that the high acquisition cost of Rafales, an estimated 11,640 crore per aircraft, is explained by the use of special weaponry they enable. Exactly how sharp a spearhead they will grant our Air Force is classified information, officially, but if they can strike precision targets from along range with nuclear-tipped missiles, then it need not take a whole squadron of 18 such jets to pose the requisite deterrence.

Two of the jets are two-seat trainers, while three would be configured for combat. In all, six of the 36 jets would be trainers, though each of them could be pressed into action. The emphasis on fewer but deadlier planes is said to be in line with the Air Force's strategic need for up-to-date firepower. As claimed, Rafales can undertake reconnaissance missions, launch various kinds of

attacks, and engage enemy jets in air-to-air combat, all guided by avionics systems that confer a significant advantage in modern warfare. What makes these fighters especially fearsome, say experts, are the versatile missiles they can be loaded with. An air-to-air Meteor shot can reportedly hit a moving target more than 120 km beyond a pilot's field of vision, for example, while the shorter-range Mica can strike an enemy plane without it being alerted by radar. The aircraft's deep-strike cruise missile Scalp is no less stealthy; reputedly, it can hit ground targets accurately, and that too with devastating effect.

The superiority of this weaponry was the principal point cited by the government—customization was another—to justify a magnified bill of \$8.7 billion for 36 planes after it rejected its predecessor's \$2.6 billion outlay for 126 Rafales, 108 of which were to be assembled locally by Hindustan Aeronautics Ltd (HAL). While the newly delivered ready-to-fly jets would be far more potent than the "bone-bone" ones that our Air Force was counting on earlier, the aerial domination of any theatre of war still requires a sizeable fleet of fighters. Against the sanctioned strength of 42, our Air Force has only 30 squadrons right now. It is here that the locally-developed Tejas, India's own light combat aircraft, must come into play—soon. Equipped with a new engine, it was found combat-worthy a few years ago. It is time now for HAL to speedily roll them out in large numbers, if only to fill squadron gaps and replace ageing MiG-21s and Mirage fighters. Given the appropriate training and coordination software, a few lethal Rafales backed by a swarm of low-cost Tejas fighters could conceivably shield the country from foreseeable threats.

The court has an opportunity to lay down the limits of contempt

The Prashant Bhushan case could help minimize the subjective application of our contempt law



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I would be useful to let the current contempt of court proceedings against senior counsel Prashant Bhushan reach a logical and well-announced judicial conclusion. There are actually two contempt cases involved. One relates to a 2009 statement made by Bhushan to *Tehelka* that eight of 16 former Supreme Court judges were (or had been) corrupt, which is being heard by a three-judge bench. The other case relates to a series of tweets by Bhushan about the current chief justice and the judiciary in general. One case comes up for hearing on 4 August and the other the next day.

A statement signed by some retired judges and prominent left-liberal politicians, activists and intellectuals has called on the Supreme Court to withdraw the contempt case against Bhushan. The statement may or may not be politically motivated, but the only way to deal with it is by actually going into the merits of the contempt case, and the validity of various contempt laws. If needed, the three-judge bench can be expanded to make it a constitutional bench, for what is under contention here is the constitutionality of the contempt law itself.

The Supreme Court and various high courts have powers under Articles 129 and 226 to act against contemnors. Article 129 says that "The Supreme Court shall be a court of record and shall have

all the powers of such a court, including the power to punish for contempt of itself." Article 226 says much the same thing in regard to the powers of high courts. In addition, there is the Contempt of Courts Act, 1971 which seeks to define what constitutes contempt. There are broadly two types of contempt, civil and criminal. The former includes defiance of court orders or judgments or refusal to honour undertakings given in court. The latter includes publication (by words, sign or visible representation) that would "scandalize" or "tend to scandalize", "lower or tend to lower the authority of, any court, or (ii) prejudices or interferes or tends to interfere with, the due course of any judicial proceeding, or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner".

Common sense tells us that phrases like "tends to scandalize" can be interpreted in multiple ways by different courts and judges. The wording needs to be more precise, and standards set to differentiate between what really demeans the judicial process and what merely offends some judges.

The liberal view is that courts should not resort to the use of constitutional and legal provisions to stifle free speech, but this argument is too general and can, in many circumstances, result in courts not having any remedy against abuse and vilification. Just as free speech provisions cannot be absolute, so too comments on the judiciary cannot be an open licence to malign it, especially if done by powerful people. Courts can be violent against ordinary individuals who may occasionally rant over an unfavourable judgment, but should prominent lawyers have the exception to the fundamental right to privacy? Power comes with responsibility. It is something to criticize the content of judgments or court proceedings, and quite another to impute motives and bias. If these exist, they must be framed as charges against spe-

cific judges and proven in a court or Parliament.

In the past, matters relating to contempt have tended to result in apologies ending the matter. Bhushan himself apologized to the court last year after he admitted that he had made a "mistake" in alleging that the government had submitted "fabricated" minutes of a meeting of the high-powered selection committee that appointed M. Nageswara Rao as interim director of the Central Bureau of Investigation. In another case, though, the Supreme Court went the whole hog and ordered the arrest of a sitting high court judge, Justice C.S. Karan, for misconduct in alleging that members of the judiciary were guilty of nepotism, corruption and casteism.

In the Bhushan case, there is an additional point to consider. After the court started hearing the contempt case pertaining to his statements to *Tehelka*, his father Shanti Bhushan intervened and offered alleged "evidence" against eight former chief justices of corruption. The names and "evidence" were offered in a sealed cover. The problem with offering information in sealed covers is simple: Since there is no transparency in what is being said, the public has no way of knowing whether what was given was really evidence, or some other form of communication aimed at a few individuals. Sealed cover information is no substitute for filing an actual case of corruption against specific judges in courts. It appears to display a lack of concern for the public's right to know what exactly is being alleged, and is equally easy for the judiciary to suppress the same.

A final constitutional view on punishment and remedies for contempt of court may be useful at this juncture, not only because it involves the highest court of the land, but also because Parliament and state legislatures have similar powers to act against contempt. What we need in the Bhushan case is a clear verdict with good reasoning that sets a worthy precedent.

10 YEARS AGO



JUST A THOUGHT

Relying on the government to protect your privacy is like asking a peeping tom to install your window blinds.

JOHN PERRY BARLOW

MY VIEW | EXMACHINA

Data localization could soon be the worldwider reality

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The world has always been divided in how it thinks about privacy. As the Justice Sikri Committee pointed out, there are basically three distinct approaches—the American, European and Chinese. The panel recommended that India should consider a fourth path, and the Personal Data Protection Bill that is currently being discussed by a joint parliamentary committee represents the alternative that it believed India should adopt.

These different approaches have co-existed in a sort of uneasy equilibrium for some time now. China has applied strict restrictions on foreign data companies that operate within its territory, while Chinese data companies have taken care to comply with local laws whenever they have ventured outside that country. India, without any sort of legal framework to speak of, has relied on extra-statutory measures—contractual clauses and binding corporate rules—to trade with Europe. Similarly, despite some fundamental differences between the US and Euro-

pean data protection laws, governments on both sides of the Atlantic have always taken the trouble to create exceptional legal frameworks to facilitate the free flow of data between US and European companies.

Earlier this month, that equilibrium was destroyed—perhaps for good. The Court of Justice of the European Union (CJEU), while issuing its ruling on a complaint filed by Maximilian Schrems against Facebook Ireland, struck down the EU-US Privacy Shield on the grounds that the US law did not afford a level of protection that was compatible with protections required under Europe's General Data Protection Regulation (GDPR). In particular, the court referred to the fact that under US law, US companies were required to make personal data available to the US National Security Agency and Federal Bureau of Investigation, and that its Foreign Intelligence Surveillance Act allows US surveillance programmes to operate in ways that do not guarantee the privacy of non-US persons targeted by these. For these reasons, it held that US law did not meet the threshold of proportionality that is central to the European privacy law, and struck down the Privacy Shield.

But, perhaps more significantly, the CJEU

held that even where personal data is intended to be transferred outside the EU under the standard contractual clauses (SCCs), if the laws of the transferee countries made it impossible for data processors to comply with their obligations under the SCCs, transfer of data should not be permitted.

As much as this decision has been framed in the context of the EU-US Privacy Shield, the principles laid down have far broader applicability. India does not have a privacy law and all transfers of personal data between European and Indian companies take place under the standard contractual terms approved by EU data regulators. If the underlying law becomes relevant, all these data transfers would have to be revisited.

Much like the US, law enforcement agencies in India also have wide and sweeping powers. National security is a recognised exception to the fundamental right to privacy, and even though the right to privacy judgment made it clear that governmental actions impinging on privacy must be proportionate, surveillance is often carried out with little heed to the effect it has on the privacy of targeted individuals. If law enforcement authorities approach an Indian company demanding access to personal data of EU citizens stored in its servers, notwithstanding any contractual commitments to the contrary, these companies often have no option but to comply. That being the case, in the light of the

An EU court ruling could eventually mean that European personal data will have to stay in Europe

CJEU judgment, the fact that the data was transferred to India under the SCCs is no longer sufficient to constitute compliance with the data transfer obligations under the GDPR if local law enforcement can compel the disclosure of this data.

Many countries, beyond just the US and

India, will be affected by this decision. Businesses that trade with Europe had expected to fulfill their GDPR obligations by agreeing to be bound by the SCCs, which is no longer sufficient and if compliance is conditional upon the countries in which they operate changing their laws to meet the standards Europe demands, that might be too much to expect. While this may not have been its intention, the long-term impact of the CJEU decision is likely to be that European data will never leave European shores again.

I have always said that data localization is not in our national interest. I've argued against the data localization principle that was introduced in the Personal Data Protection Bill because I was concerned that a policy that required the personal data of citizens of India to be processed only within the physical boundaries of our country would adversely affect our ability to take full advantage of the global data economy.

But in the aftermath of *Schrems II*, I have to admit that I feel a bit foolish. After all, there is not much difference between law that requires all data to be processed within the territorial jurisdiction of your country and one that only allows you to transfer data if it is under conditions that no other country really wants to meet.