Death by design

Tighter regulations cannot eliminate the element of danger intrinsic to jallikattu

In situations involving humans and animals, Murphy's law takes a strong hold: if things can go wrong, they most likely will. Jallikattu may have drawn the attention of animal rights activists for the innumerable accounts of cruelty to bulls, but the deaths fall mostly on the human side of the ledger. The animals suffer but generally survive the ordeal, while a few youth lose their lives. A tragedy as in Viralimalai in Pudukottai district of Tamil Nadu, where two men were gored to death by bulls, was waiting to happen. Whatever the precautions taken, and there were many, one cannot prepare for the behaviour of a rampaging bull. Viralimalai jallikattu may not be as famed as the Alanganallur or Palamedu events, but this year it had the full weight of the government behind it. The event was organised by Health Minister C. Vijaya Baskar, a bull-owner himself, in an attempt to create a 'record' for the largest number of bulls in a single arena. The event got a bigger profile with Chief Minister Edappadi K. Palaniswami in attendance. Multi-tier metal galleries were erected on either side of the arena to accommodate the thousands who had turned up to watch the contest. Double barricades were in place at the *vaadivasal*, the entry point for the bulls, but the tragedy happened at the exit point, the open area for collection of the bulls after the event. The contest was over, and the bull-tamers were no longer chasing the bulls. But how were the bulls to know? An owner trying to rein in his bull was gored to death by another behind him, and a spectator who wandered out of the protective cover at the scene of action bled to death on being pierced in the abdomen.

Could anything have been done differently? In keeping with the guidelines set by the Supreme Court to regulate the sport, the Health Department had also deployed teams of doctors from Pudukottai. Medical experts from Tiruchi and Thanjavur Medical Colleges were deployed to attend to emergency cases. A makeshift operation theatre was also set up at the venue. After Sunday's tragedy, jallikattu events of the future might have barricades at the collection points too. But danger is in the very nature of the blood sport that is jallikattu. Unpredictability is intrinsic to the sport. Attempts to ban the sport have been opposed on the ground that it is an inseparable part of Tamil Nadu's culture. The Tamil Nadu government in 2017 took the ordinance route to allow for the holding of jallikattu following a ban by the Supreme Court, and the Centre exempted bulls from the rules framed for ensuring the well-being of performing animals. After every loss of human life the regulations might get tighter, but the danger to the life and limb of participants, spectators, and bull-owners will remain in the conduct of jallikattu.

Summit 2.0

A second Trump-Kim meeting could do with a Chinese nudge and a South Korean whisper

Even though there was little progress in achieving the goals set in the historic meeting between U.S. President Donald Trump and Chairman Kim Jong-un of North Korea in June 2018, the announcement of a second summit next month is a step in the right direction. The fact that Pyongyang has ceased its nuclear muscle-flexing, and has not tested any nuclear-capable device or launched any missile for more than a year, is reason for continued patience and confidence in the dialogue. The Singapore meeting generated mutual goodwill and hopes of a breakthrough. But in the declaration the leaders had promised a denuclearisation of the Korean Peninsula without indicating a timetable or the modalities of reaching that far-sighted end-goal. In the months since the meeting, Pyongyang's anticipation of an easing of U.S. sanctions have not materialised, while information about the inventory of North Korean nuclear stockpiles that Washington had sought as a first step towards a verifiable dismantling of the North Korean arsenal, has not been forthcoming. Underscoring the stalemate, U.S. Vice President Mike Pence stated days before the announcement of the coming bilateral summit that Pyongyang had made little headway on its commitments. Similarly, Secretary of State Mike Pompeo's persistent efforts since the Singapore meeting have come to nought. The concept of "complete denuclearisation" of the Korean Peninsula that formed the crux of the Singapore declaration has become a subject of conflicting interpretations. Pyongyang insists that the expression must have a wider meaning and include the U.S. military umbrella that extends across South Korea and Japan. It contends that North Korea will be the first target in the event of a pre-emptive U.S. strike. For nuclear hawks in Washington, the stalemate is at best a case of Mr. Trump's diplomatic gambit having gone awry and at worst, an impasse that allows Pyongyang to prevaricate and give nothing away.

Against this backdrop, the prospects for any meaningful progress appear to hinge on mediation by Beijing and Seoul. Moon Jae-in, South Korea's President, favours rapprochement with the neighbour, and a lasting resolution of the Washington-Pyongyang nuclear imbroglio, advocating dialogue. After his recent meeting with the Chinese leader Xi Jinping, Mr. Kim reinforced his pledge to rid the region of nuclear arms and expressed a willingness for another summit with Mr. Trump. But he emphasised Pyongyang's need for security guarantees, replacing the decades-long armistice with a formal peace treaty to mark the end of the 1950-1953 Korean War. Toning down his rhetoric, President Trump has displayed a readiness to wait and watch. It is not certain if the sober mood will translate into tangible outcomes. But that would be a credible offer that can lure Mr. Kim to reciprocate on the nuclear front.

The ambiguity of reservations for the poor

While the constitutional amendment may survive the 'basic structure' test, the hardest test will be its implementation

ANUP SURENDRANATH

FILE PHOTO/K.V. SRINIVASAN

The 103rd Constitution Amendment Act introducing special measures and reservations for 'economically weaker sections' (EWS) has been perceived as being obviously unconstitutional. This article is sceptical of such a reading and takes the view that a constitutional challenge to the amendment will take us into unclear constitutional territories. The strongest constitutional challenge might not be to the amendment itself but to the manner in which governments implement it. There is no foregone conclusion to a potential challenge and we would do well to start identifying the core constitutional questions that arise. To be clear, I am here concerned only with questions that arise within constitutional law.

Special measures

Article 15 stands amended enabling the state to take special measures (not limited to reservations) in favour of EWS generally with an explicit sub-article on admissions to educational institutions with maximum 10% reservations. The amendment to Article 16 allows 10% reservations (and not special measures) for EWS in public employment and does so in a manner that is different from reservations for Scheduled Caste/Scheduled Tribes and Other Backward Classes. The amendment leaves the definition of 'economically weaker sections' to be determined by the state on the basis of 'family income' and other economic indicators. Also critical to this amendment is the exclusion of SC/STs, OBCs and other beneficiary groups under Articles 15(4), 15(5) and 16(4) as beneficiaries of the 10% EWS reservation.

A good point to start the constitutional examination is the Supreme Court's view on reservations based purely on economic criteria. Eight of the nine judges in *Indra Sawhney* (November 1992) held that the Narasimha Rao government's executive order (and not a constitutional amendment) providing for 10% reservations based purely on economic criteria was unconstitutional. Their reasons included the position that income/property holdings cannot be the basis for exclusion from government jobs, and that the Constitution was primarily concerned with addressing social backwardness.

Basic structure doctrine

However, the decision in *Indra Sawhney* involved testing an executive order against existing constitutional provisions. In the current situation, we are concerned with a constitutional amendment brought into force using the constituent power of Parliament. The fact that we are not concerned with legislative or executive power means that the amendment will be tested against the 'basic structure' and not the constitutional provisions existing before the amendment. The pointed question is whether measures based purely on economic criteria violate the 'basic structure' of the Constitution? I do not think it is a sufficient answer to say that 'backwardness' in the Constitution can only mean 'social and educational backwardness'. Citing the Constituent Assembly debates is not going to take the discussion much further either. It is difficult to see an argument that measures purely on economic criteria are per se violative of the 'basic structure'. We can have our views on whether such EWS reservations will alleviate poverty (and they most certainly will not), but that is not really the nature of 'basic structure' enquiry. Providing a justification for these measures as furthering the spirit of substantive equality within the Indian Constitution is not very difficult.

Economic criteria (if seen as poverty) forms the basis for differential treatment by the state in many ways and it would be a stretch to suddenly see it as constitutionally suspect when it comes to 'special measures' and reservations in education and public employment. Poverty inflicts serious disadvantages and the prerogative of the state to use special measures/reservations as one of the means to address it (however misplaced it might be as a policy) is unlikely to fall foul of the 'basic structure' doctrine.

A challenge to the amendment may lie in the context of Article 16 by virtue of shifting the manner in which reservations can be provided in public employment. Under Article 16(4), reservations for backward classes (SC/STs, OBCs) are dependent on beneficiary groups not being 'adequately represented' but that has been omitted in the newly inserted Article 16(6) for EWS. The amendment through Article 16(6) ends up making it easier for the state to provide reservations in public employment for EWS than the requirements to provide reservations for 'backward classes' under Article 16(4). In a sense that is potentially a normative minefield for the Supreme Court. On the one hand, it is confronted with the reality that 'backward classes' like SC/STs and OBCs are disadvantaged along multiple axes and on the other, it is now far more difficult for the state to provide reservations to these groups compared to the EWS. The response might well be that 'representation' is not the aim of EWS reservation and questions of 'adequacy' are relevant only in the context of representation claims like those of the backward classes under Article 16(4).

Questions and challenges

In many of the responses to the amendment, breaching the 50% ceiling on reservations has been cited as its greatest weakness. It is hard to see the merit of that argument because the amendment by itself does not push the reservations beyond 50%. While it might be a ground to challenge the subsequent legislative/executive actions, the amendment itself is secure from this challenge. But even beyond this narrow technical response, the 50% ceiling argument is far from clear. In *Indra Sawhney*, the majority of judges held that the 50% ceiling must be the general rule and a higher proportion may be possible in 'extraordinary situations'. Fundamentally this argument stems from an unresolved normative tension in Indra Sawhney. While committing to the constitutional position that reservations are not an 'exception' but a 'facet' of equality, the majority in *Indra Sawhney* also invokes the idea of balancing the equality of opportunity of backward classes 'against' the right to equality of everyone else. When governments implement the EWS reservations and push quotas beyond 50%, the Supreme Court will be forced to confront this normative tension. If reservations further equality, what then are the justifications to limit it to 50% when the identified beneficiaries constitute significantly more than 50%? The answer to that question might lie in *Indra Sawhney*'s position that the constitutional imagination is not one of 'proportional representation' but one of 'adequate representation'. However, as discussed above, if abandoning the 'adequacy' requirement per se is upheld for EWS reservations, the basis for a 50% ceiling becomes unclear.

While the constitutional amendment by itself might survive the 'basic structure' test, the hardest test for governments will be the manner in which they give effect to the amendment. The definition of 'economically weaker sections' will be a major hurdle because the political temptation will be to go as broad as possible and include large sections of citizens. But broader the definition, greater will be the constitutional risk. For example, if beneficiaries are defined as all those with family income of less than ₹8 lakh per annum, it must necessarily fail constitutional scrutiny. To justify that an individual 'below poverty line' and another with a family income of ₹8 lakh per annum belong to the same group for purposes of affirmative action will involve constitutional jugglery at an unprecedented level. But then, the history of our constitutional jurisprudence has prepared us well for such surprises.

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The fault lines of diplomatic recrimination

The Huawei episode raises serious concerns over issues that are germane to international business and trade

R.K. RAGHAVAN

One of the world's largest telecom companies, Huawei, is at war with a few powerful western nations led by the United States. This is not a new spat. The conflict, which has been simmering for quite a few years, reached its crescendo on December 1, 2018 with the detention and arrest of Sabrina Meng Wanzhou, its Chief Financial Officer, in Vancouver, Canada, for allegedly breaking U.S. sanctions on Iran by way of bank frauds. The U.S had asked Canada to detain her.

Ms. Meng, a tech heiress, is the daughter of Huawei's founder Ren Zhengfei and was arrested while in transit at the airport. A Canadian court has granted her bail, but she could face extradition to the U.S. The incident, which has led to an uproar in China, has left Canada embarrassed, as any decision will have a bearing on its ties with Beijing.

The more recent conviction (January 14) of a Canadian national Robert Lloyd Schellenberg to death by a court in China for drug trafficking has only aggravated the controversy. Significantly, this conviction was based on a retrial that took place after the arrest of Ms. Meng. The fact that Canada does not have a death sentence on its statute books complicates relations between the two countries. The Canadian Prime Minister, Justin Trudeau, has assailed this as a political move. Additionally the recent detention in China of two other Canadian citizens (one, a diplomat on leave) on national security grounds has muddied the waters further.

The Chinese assessment is that the U.S. is exercised over the growing stature of Huawei and the resultant threat to U.S. technology companies and links this to the action against Ms. Meng. It must be remembered that Huawei has overtaken Apple to become the second largest maker of smartphones, and its investments in research and development are growing at a frenetic pace.

Need for protocol

The conflict between China and the West, especially the U.S., raises serious concerns over issues that are germane to international business and trade. The first is its impact on the troubled state of international relations and international law that operates in such cases. There is also the issue of the apparent ease and arbitrariness with which a nation determined to outwit a rival can hit the latter hard. There does not seem to be an ethical set of rules.

No one suggests that Ms. Meng did not transgress U.S. law. She may have acted surreptitiously to

REUTERS

counter U.S. sanctions against Iran. The point, however, is whether such drastic action against a top executive was warranted, especially in the context of the fragile relationship between the two nations. The implications of the incident, in terms of the need for a protocol between nations in the area of criminal justice must be pondered over. Some experts cite the concept of 'long-arm jurisdiction' in support of the U.S. action – such jurisdiction empowers a nation to enforce its laws and rules over foreign entities, generally through courts.

The concept has a political colour to it and, therefore, questionable in cases such as Ms. Meng's arrest. The Chinese criminal action against three Canadian nationals also smacks of vindictive conduct.

On the other side, the detention of Ms. Meng was obviously meant to send out a signal not only to China but also to prospective violators of U.S. sanctions. If this was the objective, this was achieved, with the rider that a nation acting so peremptorily may have to brace itself to meet retaliatory action by the targeted nation, as borne out by the Chinese action against the three Canadians, one of whom now faces execution. This collateral damage to Canada should set alarm bells ringing, especially in the West.

Issue of cybersecurity

A second important issue relates to cybersecurity. China, along with Russia, has long been suspect in the eyes of the West for spying, the basis for this being proven instances of online attacks and unestablished cases of breaches in western computer systems. In the case of Huawei, the western line is that as it is a corporation close to the Chinese establishment, its activities cannot be purely technological and commercial. Ren Zhengfei had links with the People's Liberation Army (PLA). The specific charge against Huawei is that in every piece of hardware sold by it, there are microchips and devices that provide substantial information to the Chinese authorities. The irony is that there has been no major irrefutable evidence communicated to the rest of the world to substantiate this charge. Western agencies say that Huawei is so smart and skilful that it is impossible to ferret out such evidence. On its part, the latter has dismissed the charges against it as fanciful and motivated, only in order to keep it at bay after its successful forays into American hardware bastions.

Third is the issue of the continued fragility of cybersecurity as far as the average computer user is concerned. Breaches even in highly protected environments across the globe hardly instil confidence in ordinary customers who have bought devices and follow procedures, often at great expense, to plugging security loopholes in their systems. There is, therefore, a growing reluctance on the part of many large corporations to invest more in cybersecurity. From this perspective, an emerging philosophy is that security can never be 100%, and that one should not be unduly agitated over inevitable cyberattacks, as long as they do as they do not cause major loss, economic or reputational.

There is no means to guess the impact of the U.S. action on to-be-released and game-changing 5G technology, and in which Huawei has great stakes. China maybe expected to up the ante if any Western nation actually goes to the extent of banning Huawei from a role in the upgradation. China suspects that the anti-Huawei campaign is only at the instance of its competitors to cut it down to size on the eve of the launch of a valuable product. But this again is in the realm of speculation.

R.K. Raghavan is a former CBI Director. The views expressed are personal

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.

Eye on the border

One thing is crystal-clear about our aggressive neighbour, Pakistan – that it never has wanted peace. It is a country that constantly plots what to do next even if the earlier plan has failed.
Indian Army officers are unlikely to discuss sensitive issues openly, as can be read from the report (Page 1, "'9/11 derailed Army plan to capture Pakistani posts along LoC'," January 21). As long as firm action such as "Operation Kabaddi" is put off, India will continue to pay a heavy price in terms of our soldiers' lives being lost and our vital military installations becoming vulnerable to attack.

A.M.N. PANDIAN,
Tirunelveli, Tamil Nadu

Rafale deal

The Hindu's exclusive report on the Rafale fighter aircraft deal does not seem to find anything that merits a deep probe. The CAG has complete access to the files on the deal, so why jump the gun and cry foul without waiting for its report? The highest court of the land too did not find anything adverse. The silver lining is that there is no money trail in this deal.
One must always remember that when there are thousands of our brave sons at our borders fighting the odds to ensure our safety, any amount of money spent for the country's defence procurements is not at all an issue per se.

S. SESHADRI,
Chennai

Data and NREGA

The article, "Fabrication and falsification" (Editorial page, January 21) flags the grave danger caused by deliberate manipulation of data by government agencies. This is the worst form of corruption as it is done with the intention of cheating the common man by projecting false performance. We often lament that Indians are corrupt but unless this sort of dishonesty is rooted out from the highest offices, how can we even talk of eliminating corruption at the grass-root level?

SUNIL KUNNATHULLY,
Kochi

Federer crashes out

The Australian Open match on Sunday, where Roger Federer was stunned by Stefanos Tsitsipas, needs to be viewed how close it was in terms of the tie-breaks ('Sport' page, "Tsitsipas packs off his idol Federer; Kerber too shown the door", January 21). His opponent had twin advantages. The first was he had nothing to lose so there was no pressure on him while Federer had to win. The second is that tie-breaks are most unpredictable. Federer needs to ponder over his future. One could discern a lack of power in his ground strokes. And, however fit one is, age is still a crucial factor. Once a player becomes half-a-step slower, he cannot be expected to win all his matches. Federer is in that situation now.

V. LAKSHMANAN,
Tirupur, Tamil Nadu

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CORRECTIONS & CLARIFICATIONS:

In the interview of Dravidar Kazhagam president K. Veeramani (Jan. 21, 2018, some editions), in the answer to the last question, the place of seminar by the Backward Classes Commission was wrongly mentioned as *Kerala*. It is actually *Karnataka*.

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

Why EVMs must go

Paper ballots claim legitimacy by passing the three tests of a free and fair election, which EVMs don't

G. SAMPATH

"It is nearly impossible to detect EVM-tampering." EVMs being inspected in Chennai before the R.K. Nagar byelection. ▪ V. GANESAN

The recent Assembly elections – the last major polling exercise before the 2019 Lok Sabha polls – were not devoid of Electronic Voting Machine (EVM) malfunctions. Though the discourse at present makes no distinction between a 'malfunction' (which suggests a technical defect) and 'tampering' (manipulation aimed at fraud), there were several reports of misbehaving EVMs.

A discrepancy of even one vote between votes polled and votes counted is unacceptable. This is not an unreasonably high standard but one followed by democracies worldwide. It might therefore be helpful to briefly look beyond the question that has hijacked the EVM debate – of how easy or tough it is to hack these machines – and consider the first principles of a free and fair election.

Electoral first principles

The reason a nation chooses to be a democracy is that it gives moral legitimacy to the government. The fount of this legitimacy is the people's will. The people's will is expressed through the vote, anonymously (the principle of secret ballot). Not only must this vote be recorded correctly and counted correctly, it must also be seen to be recorded correctly and counted correctly. The recording and counting process must be accessible to, and verifiable by, the public. So transparency, verifiability, and secrecy are the three pillars of a free and fair election.

Regardless of whether one is for or against EVMs, there is no getting away from the fact that any polling method must pass these three tests to claim legitimacy. Paper ballots obviously do. The voter can visually confirm that her selection has been registered, the voting happens in secret, and the counting happens in front of her representative's eyes.

EVMs, however, fail on all three, as established by a definitive judgment of the German constitutional court in 2009. The court's ruling forced the country to scrap EVMs and return to paper ballot. Other technologically advanced nations such as the Netherlands and Ireland have also abandoned EVMs.

If we take the first two criteria, EVMs are neither transparent nor verifiable. Neither can the voter see her vote being recorded, nor can it be verified later whether the vote was recorded correctly. What is verifiable is the total number of votes cast, not the choice expressed in each vote. An electronic display of the voter's selection may not be the same as the vote stored electronically in the machine's memory. This gap was why the Voter Verifiable Paper Audit Trail (VVPAT) was introduced.

But VVPATs solve only one-half of the EVMs' transparency/verifiability problem: the voting part. The counting part remains an opaque operation. If anyone suspects a counting error, there is no recourse, for an electronic recount is, by definition, absurd. Some believe the VVPATs can solve this problem too, through statistics.

At present, the EC's VVPAT auditing is restricted to one randomly chosen polling booth per constituency. In a recent essay, K. Ashok Vardhan Shetty, a former IAS officer, demonstrates that this sample size will fail to detect faulty EVMs 98-99% of the time. He also shows that VVPATs can be an effective deterrent to fraud only on the condition that the detection of even one faulty EVM in a constituency must entail the VVPAT hand-counting of all the EVMs in that constituency. Without this proviso, VVPATs would merely provide the sheen of integrity without its substance.

The third criterion is secrecy. Here too, EVMs disappoint. With the paper ballot, the EC could mix ballot papers from different booths before counting, so that voting preferences could not be connected to a given locality. But with EVMs, we are back to booth-wise counting, which allows one to discern voting patterns and renders marginalised communities vulnerable to pressure. Totaliser machines can remedy this, but the EC has shown no intent to adopt them.

So, on all three counts – transparency, verifiability and secrecy – EVMs are flawed. VVPATs are not the answer either, given the sheer magnitude of the logistical challenges. The recent track record of EVMs indicates that the number of malfunctions in a national election will be high. For that very reason, the EC is unlikely to adopt a policy of hand-counting all EVMs in constituencies where faulty machines are reported, as this might entail hand-counting on a scale that defeats the very purpose of EVMs. And yet, this is a principle without which the use of VVPATs is meaningless.

Unjustified suspicions

Despite these issues, EVMs continue to enjoy the confidence of the EC, which insists that Indian EVMs, unlike the Western ones, are tamper-proof. But this is a matter of trust. Even if the software has been burnt into the microchip, neither the EC nor the voter knows for sure what software is running in a particular EVM. One has to simply trust the manufacturer and the EC. But as the German court observed, the precondition of this trust is the verifiability of election events, whereas in the case of EVMs, "the calculation of the election result is based on a calculation act which cannot be examined from outside".

While it is true that the results come quicker and the process is cheaper with EVMs as compared to paper ballot, both these considerations are undeniably secondary to the integrity of the election. Another argument made in favour of the EVM is that it eliminates malpractices such as booth-capturing and ballot-box stuffing. In the age of the smartphone, however, the opportunity costs of ballot-box-stuffing and the risk of exposure are prohibitively high. In contrast, tampering with code could accomplish rigging on a scale unimaginable for booth-capturers. Moreover, it is nearly impossible to detect EVM-tampering. As a result, suspicions of tampering in the tallying of votes – as opposed to malfunction in registering the votes, which alone is detectable – are destined to remain in the realm of speculation. The absence of proven fraud might save the EVM for now, but its survival comes at a dangerous cost – the corrosion of people's faith in the electoral process.

Yet there doesn't have to be incontrovertible evidence of EVM-tampering for a nation to return to paper ballot. Suspicion is enough, and there is enough of it already. As the German court put it, "The democratic legitimacy of the election demands that the election events be controllable so that... unjustified suspicion can be refuted." The phrase "unjustified suspicion" is pertinent. The EC has always maintained that suspicions against EVMs are unjustified. Clearly, the solution is not to dismiss EVM-sceptics as ignorant technophobes. Rather, the EC is obliged to provide the people of India a polling process capable of refuting unjustified suspicion, as this is a basic requirement for democratic legitimacy, not an optional accessory.

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Justice delayed is markets stymied

In a market economy like India, a strong judiciary is required for quick settlement of disputes

SAMEER MALIK & SANJIB POHIT

Since the 1991 economic reforms, India has improved tremendously in almost all economic indicators, and is now one of the fastest growing nations in the world. Various economic policies of the current government have enabled the economy to move faster than ever before. These include tax reforms leading to the introduction of the Goods and Services Tax, reforms making India more competitive in the 'Ease of Doing Business' index, and implementation of the Insolvency and Bankruptcy Code. But it has never been more important to also strengthen the quality of the material which makes up the engine of the economy, i.e. India's institutions. As a democracy, India has an advantage: the roots of all its institutions are strong. However, they have simply failed to grow with the growing population and with increasing demands. The judicial system, in particular, is far from reaching the pace required for efficient functioning.

An inefficient judiciary

The importance of the judiciary cannot be underplayed in a market economy. Three things are crucial for the market economy to function efficiently: transparency in information, efficient dispute settlements, and contract enforcement in a time-bound manner powered by an effective judiciary. In a market economy, the government has little role to play in transactions among players. However, it plays an effective role by setting up efficient dispute settlement mechanisms, so that the costs of transactions are minimal. In such an economy, the judiciary plays the pivotal role by enforcing contracts in the case of disputes through minimal costs.

Over the years, and with the advent of the Internet, India has taken a leap towards transparency of information. However, little progress has been made in the case of dispute settlement mechanisms due to an inefficient judiciary. The situation is so desperate that the Economic Survey of 2017-18 had to set aside an entire chapter on the need for 'Timely Justice'. It noted that the current working capacity of the High Courts and the Supreme Court is only 63.6%. Plus, there are huge numbers of pending cases: 1.8 lakh in six of the major tribunals, and close to 3.5 million in the High Courts. For economic cases, the average duration of pendency is about 4.3 years for the five major High Courts. The Centre and the States approximately spend 0.08-0.09% of the GDP on administration of justice, which is very low. In 2017, India spent about ₹0.24 per person on the judiciary; the U.S. spent ₹12. Even though, understandably, it is a little punitive to compare India's budget with that of the most powerful economy in the world, the point is to set out a benchmark for India.

The problem is with economic theory

Unlike our policymakers, those in other countries seem to have realised the importance of the judiciary in the efficient functioning of a market economy. The problem here lies with economic theory. The proponents of reform belong to the school of neoclassical economics, and are taught that transactions are costless. However, the writings of Richard Coase and Douglass North have taught us that in reality, the rules and regulations that affect economic activity determine whether transactions are costless or not. This theory of new institutional economics questions the two crucial assumptions of neoclassical economics – costless transactions and perfect information – and stresses the role of institutions in facilitating market exchange by reducing transaction costs, providing a predictable framework for exchange, and overcoming imperfect information. In India, there are few practitioners of new institutional economics and that could explain why this aspect has not been addressed in the past decade.

The low focus on the judiciary obviously implies that non-compliance of contracts is not at all costly in India. The official dispute settlement mechanism does not deliver justice in a time-bound manner. Consequently, players are willing to bypass the system by paying rents to government officials, a system that became customary in the License Raj. Officials are willing to accept quick money since there is little chance of getting caught, making venality a norm. Of course, studies in political economy have shown that strengthening institutions and political power enjoyed by the incumbent are in conflict of interest. Thus, the Opposition also has a major role to play in the solidification of institutions, including, and especially, the judiciary. Strong institutions are the key to move India up the economic ladder. Otherwise, India will remain a land of crony capitalists.

Sameer Malik and Sanjib Pohit are with the National Council of Applied Economic Research. Views are personal

SINGLE FILE

Yet another soft target

The hounding of Anand Teltumbde shows the contempt for public intellectualism in today's India

KANCHA ILAIAH SHEPHERD

V. SREENIVASA MURTHY

I do not agree with activist Anand Teltumbde on many ideological fronts, nor does he agree with me. That is evident from his writings about my work. He is a Dalit scholar and comrade of many upper-caste intellectuals, who do not like my work. Yet I can vouch for the fact that he is an intellectual of the highest quality. And Hindutva-based parties tend to have contempt for public intellectualism. Those in the Sangh Parivar cannot match Mr. Teltumbde's commitment to the people's cause.

If he is arrested for disagreeing in writing on the causes behind the Bhima-Koregaon incident of January 1, 2018, that would rank among the most significant cases of overreach by law enforcement. The unjust arrest of an intellectual may not cause the loss of votes in a democracy such as ours, but it could lead to a rebellion against the forces of elitist chauvinism. If such rebellions gather force across the nation, that might even spur a political revolution of the sort that other countries have occasionally witnessed.

Maoists, to whom the state appears to be seeking to link Mr. Teltumbde, have thus far failed to create the conditions for a true revolution. They were unlikely to succeed so long as Indian democracy operated in a manner consistent with its constitutional foundations. Yet, as there are growing incidents of unjust arrests of public intellectuals, a more potent rebellion against formal authorities may take place.

In India intellectuals are considered soft targets because of a general lack of interest in public intellectualism relative to, say, religious institutions. But French society was in the same stage at the time of the philosopher Voltaire, on the cusp of the French revolution. If not today, India may well reach that stage tomorrow. Religiously conservative governments may catalyse that process.

Mr. Teltumbde's has been the most vibrant pen since B.R. Ambedkar, particularly from that social background in Maharashtra. He may be a public intellectual who sometimes disagrees with Ambedkar's ideas, but he remains a member of that intellectual family.

Today the authorities are seeking to muzzle this voice and prove that they are nationalists. This kind of spiritually loaded nationalism inspires a philosophical internationalism among Indian intellectuals seeking a common cause for a bigger democratic fight. The idea of Hindutva may be Indian, but the idea of civil liberty is international. It was the common cause of Voltaire of the 18th century and Teltumbde of 21st century. The cause of Indian democracy would be better served if the FIR against Mr. Teltumbde were dropped, and we simply let him get on with his writing and teaching.

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NOTEBOOK

'Please read my story'

The thought that drives journalists in danger

SUHASINI HAIDAR

Contrary to many of the stories that appeared about him after his brutal death in 2011, Pakistani journalist Syed Saleem Shahzad had always played it safe. A journalist at the *Asia Times*, Shahzad wrote about jihadi groups, and was among the few who had met Osama bin Laden, Mullah Omar, Ilyas Kashmiri and other elusive terrorist leaders. He stayed under the radar, seldom appearing on TV, living in a different city from his family, and keeping his travel plans close to his chest.

Yet there he was, a few days after bin Laden's capture and killing, at a prominent restaurant in Islamabad, giving an Indian journalist a television interview. Shahzad's theory was that al-Qaeda and affiliated pan-Islamic groups had managed to infiltrate a small part of the Pakistani Army. According to him, bin Laden's killing would prove the trigger for those groups. Within a few weeks, the Pakistani Army's naval base, PNS Mehran, in Karachi was attacked. Shahzad wrote a story, the "first article of a two-part report", on how the al-Qaeda-linked "313 Brigade" had carried out the attack.

The second part of the report was to be on the recruitment and training of the militants. But it never appeared. Shahzad was abducted, tortured and killed. In an interview to me a few weeks before his death, Shahzad had said: "Even if I don't remain, I have written a book. Please ensure that it is widely read." The book, *Inside Al-Qaeda and the Taliban: Beyond bin Laden and 9/11,* was released after his death and never actually caught on. But his words remain the driving thought of every journalist I have met, regardless of the dangers they face.

Unfortunately, Shahzad was not the only journalist I met who faced threats. American journalist Marie Colvin did too – of a different kind. In 2011, Colvin was one of the few journalists who had been invited by Muammar Gaddafi to cover his stand-off with the U.S. and its European allies. Colvin was aware that the wily Libyan dictator had invited renowned international journalists to Tripoli only to ensure that NATO forces wouldn't attack his capital. As I fixed a mike on her for an interview, I asked her why she had come. She shrugged. "What else would I do," she asked. "If we don't write the stories, how can we expect people to read them?" Colvin, who wore a black eyepatch after losing an eye in a mortar attack in Sri Lanka some years before, escaped alive from Libya. But less than a year later, she was killed while covering the Siege of Homs.

Last June, Shujaat Bukhari, Editor of *Rising Kashmir* and a former correspondent of *The Hindu*, was gunned down outside his office in Srinagar. That Bukhari supported the peace process and the short-lived ceasefire operations in Kashmir had become too dangerous for those who wanted the violence to continue. In May, at the start of the ceasefire, Bukhari had made an impassioned plea to journalists to come to Srinagar and write about the benefits of the small window of peace. "Don't let Kashmir go off the news pages," he had said to me. Those who had ordered his killing had clearly wanted more than just the end of one story; they wanted to erase a credible byline.

All of them were targeted for the stories they were writing. They wrote those stories anyway, with only one hope: that they would be read.

FROM The Hindu. ARCHIVES

FIFTY YEARS AGO JANUARY 22, 1969

Specialists from Bombay examine C.M.

Two specialists from the Tata Memorial Cancer Institute, Bombay, Dr. Paymaster and Dr. Jussawalla, arrived in the City [Madras] this morning [Jan. 21] and examined the Chief Minister, Mr. C.N. Annadurai, who has been admitted in the Cancer Institute, Adyar. The specialists studied the X-ray pictures of Mr. Annadurai and also held prolonged discussions with the panel of doctors appointed by the State Government to treat him. A bulletin issued by the Health Minister later in the afternoon said: "For the past few days, the doctors attending on the Chief Minister, Mr. C.N. Annadurai, have been concerned about certain symptoms presented by him which suggested the possibility of a small area of recurrence of disease. They have investigated and desired that a few more specialists could be called in for opinion." Accordingly, "Dr. Paymaster and Dr. Jussawalla of Bombay examined the Chief Minister to-day. The Chief Minister's general condition continues to be satisfactory."

A HUNDRED YEARS AGO JANUARY 22, 1919

Mr. S.N. Banerjee at the Law College.

At a meeting at the Law College, Madras, which was intended for the benefit of the students of the College and which was not open to the Press, the Hon'ble Mr. T. Rangachariar delivered a lecture last evening [Jan. 21] on the Montagu-Chelmsford Reform Scheme. The Hon'ble Mr. Surendranath Banerjee presided. In the course of his concluding remarks as Chairman Mr. Banerjee said that the road to responsible government was laid out in the scheme in clear and strong outlines. They had only to prove their capacity at every stage of development before proceeding to the next stage. There had been a profound change in the angle of vision of their rulers. The colour barrier had been removed. The appointment of Sir S.P. Sinha as Under-Secretary in the India Office was an instance.

CONCEPTUAL

Wisdom of repugnance

PHILOSOPHY

Also known as the yuck factor, this refers to the argument that any intuitive feeling of disgust that a human being might feel towards something is reason enough to consider the thing to be immoral in nature. Supporters of this idea believe that the emotional reaction towards something is simply an involuntary articulation of deeper wisdom within human beings that may not be easily comprehensible through reason. The term was coined by American scientist Leon R. Kass in 1997 to argue against the cloning of human beings. Critics of the idea believe that gut reaction against something can, in fact, lead people to do things that are deeply unethical in nature.

MORE ON THE WEB

In conversation with writer and investigative journalist Suki Kim

http://bit.ly/JournalistSukiKim