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# Guilty till proved innocent

Burden of proof in POCSO cases lies on the accused. The introduction of death penalty will make it difficult for the weak and poor to overturn presumption of guilt



ARUNDHATI KATJU

THE UNION CABINET has approved amending the Protection of Children from Sexual Offences Act, 2012 (POCSO), to introduce the death penalty as a punishment for offences of penetrative sexual assault and aggravated penetrative sexual assault (Sections 4, 5 and 6). Cases of sexual assault by police officers, members of the armed forces, public servants, gang-penetrative sexual assault, and relatives are treated as “aggravated” cases, as are cases where the survivor is less than 12 years old.

The reason given for introducing the death penalty is that it will deter child sexual abuse. The government’s press release does not cite any evidence to prove that the death penalty can achieve this goal, in the absence of better policing and shorter trials. POCSO is already a stringent act, carrying presumptions of guilt of the accused. Imposing the death penalty for offences that already carry such stringent presumptions violates the right to life guaranteed under the Constitution. Further, it is especially difficult for the poor or disadvantaged groups to overturn these presumptions. And, studies show that most death row prisoners are from poor, lower caste or religious minority communities.

Usually, in criminal cases, the burden of proof lies on the prosecution, and the guilt must be proved beyond reasonable doubt. Under POCSO, however, there is a presumption that a person who is prosecuted for an offence has actually committed the offence, unless the contrary is proved (Section 29). Instead of “innocent until proven guilty”, the court assumes that the accused is guilty once

the prosecution lays the foundation of the case. The Act also presumes that the accused person had a sexual intent when touching the child (Section 30).

The 262nd Law Commission Report has recommended universal abolition of the death penalty, except in terror cases. (The report excluded terror cases not because it found any penal or national security justification for retaining the death penalty, but because there was a sharp division amongst law makers on this question.) Under Article 21 of the Constitution, a person can only be deprived of their life or liberty in accordance with the procedure established by law. This procedure must be just, fair and reasonable. Without quality legal representation, it is virtually impossible for an accused to overcome the presumption of guilt. Imposing death penalty in an offence with a presumption of guilt cannot be a just or fair procedure.

Rebutting these presumptions requires either that the accused bring witnesses and documents in their defence or conduct a stellar cross-examination. Both require high quality lawyering. In my experience defending indigent POCSO accused as a lawyer for the Delhi High Court Legal Services Committee, overcoming these statutory assumptions is difficult and expensive for the poor. For daily-wage earners, the legal process means loss of income as well. If the accused is in jail, their family will have to collect evidence and find witnesses. And neighbours or employers may not readily give evidence for migrant workers.

A 2016 report by the Death Penalty Project, National Law University, Delhi found that death row prisoners are overwhelmingly poor, lower caste, or religious minorities. Seventy six per cent of death row inmates were poor. The report found that 17.4 per cent of death row convicts were aged 18–21 years at the time of the incident. 18.5 per cent of this group had never attended school and 59.2 per cent had not completed their secondary education. Researchers identified “economic vulnerability” based upon occupation (including manual casual labourers, marginal and small

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cultivators, low paying public and salaried employment, small own account enterprises, students, unemployed, religious occupations, salaried public and private employment) and landholding (medium and large cultivators). Based on this criterion, 74.1 per cent of death row prisoners were found to be economically vulnerable.

Economic vulnerability impacted the experience of the prisoner during the investigation and trial. About half of the sample of 383 prisoners spoke about lack of access to lawyers. Of these, 97 per cent (185 prisoners) did not have access to a lawyer during interrogation. Eighty per cent of those who did not have access to a lawyer were economically vulnerable. One hundred and fifty five persons spoke of their experience of custodial violence, and 128 of being tortured in police custody.

Seventy six per cent of death row prisoners were from backward classes and religious minorities. Although the report noted that its “purpose was not to suggest any causal connection or direct discrimination”, it suggested that the “disparate impact of the death penalty on marginalised and vulnerable groups must find a prominent place in the conversation on the death penalty”. At the national level, 24.5 per cent of those on death row were from Scheduled Castes and Scheduled Tribes with Maharashtra, Karnataka, Madhya Pradesh, Bihar, Jharkhand and Delhi being above the national average. The report also found that as cases travelled up the court hierarchy, the proportion of general category prisoners fell, and the proportion of Scheduled Caste and Scheduled Tribe prisoners increased.

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The writer is a lawyer practising in New Delhi

## WHAT THE OTHERS SAY

“In the face of sudden escalation of China-US trade conflict throughout 2018, Beijing chose neither a concession nor a confrontation.”

— GLOBAL TIMES, CHINA

# A coal commission for India

As it transitions to renewable energy, the country needs to articulate a credible economic future for the coal belt



ROHIT CHANDRA

IN GERMANY TODAY, there is an existential tug-of-war between the declining remains of a historic, deep-rooted and culturally significant coal industry and the country’s “coal commission,” (formally known as the Committee on Growth, Structural Change and Employment), which is slowly but surely setting targets for the phase-out of coal-based power generation from the country’s energy mix. The commission is made up of 28 members with voting rights, which includes trade union leaders, industry associations, academics, and regional representatives. This commission is a political settlement mechanism which will determine how and when coal’s phase-out will occur while preventing massive structural unemployment.

Why is this interesting for India? India is at the early stages of a major energy transition. After a few years of renewable energy (RE) deployment, supplemented by unprecedented declines in RE prices, the consensus around RE seems to be clear: Within a few decades, RE will become an increasing part of India’s energy mix. However, like in Germany, the how and when questions loom large. India’s thermal coal base, which still provides over 60 per cent of the country’s overall generation, is still growing (albeit more slowly). More importantly, roughly 15–20 million people in the coal belt are dependent on the coal industry, either directly or indirectly, for their livelihood. The comparative geography of India’s wind and solar resources versus coal makes one thing abundantly clear: RE jobs will not be coming to the coal belt in large numbers. Then what is the transition strategy for the coal belt? This will be the defining question for these regions, particularly in eastern India.

At various points in recent history, central government committees have been set up to look into mining and energy industries from beyond the traditional silos of line ministries. In the early 1970s, the Fuel Policy Committee under Sukhomoy Chakrabarty made influential recommendations about opening up India’s coal industry to private involvement. More recently, in the 2000s, the Hoda Committee made sweeping recommendations about changes needed in India’s mineral exploration environment to encourage private mining companies. More than a decade later, these ideas are slowly being implemented. And finally, the Integrated Energy Policy of 2006 articulated India’s energy security priorities while laying out a roadmap for phasing out capital subsidies and providing early support to RE.

The government should consider putting together such a committee to consider the future of India’s coal industry, and the

PSUs engaged in these industries. While companies like Coal India face no immediate threat to either coal demand or their market power, in a multi-decadal timeframe both these concerns will become real.

As the previous Economic Survey has shown, the divergence in economic performance and incomes between India’s states has intensified over the last decade, and public spending and investment have become increasingly necessary in poorer states to keep them afloat. Not surprisingly, many coal-bearing states are also in the bottom third by income per capita (Jharkhand, MP, Odisha, Chhattisgarh and West Bengal in ascending order). But one of the big benefits of public investments is that they can be guided. This is already visible from the way the current government has been taking financial surpluses from both the NTPC and Coal India to invest in solar power, fertiliser plants, and other areas far from the core business areas of these companies.

In fact, for all the criticisms of the public sector, one of its greatest achievements is that PSUs have continued to operate in eastern India for decades, despite the political complexities, adverse business environment, and infrastructural constraints that accompany the region. While large private investment has largely evaded the coal belt, PSUs like Coal India have built up considerable social and political capital in these regions which allow them to conduct business. Can this social and political capital be used to pivot towards other activities? Can companies like Coal India become diversified national champions as part of a new industrial policy for the coal belt? Can Indian coal be used for non-combustion purposes and what technologies would be necessary for such a transition? These are the kinds of questions an Indian “coal commission” should consider.

An interesting experiment with coal has been the Dankuni Coal Complex outside Calcutta, which was created in 1974 by the recommendation of the Fuel Policy Committee to substitute away from fuel oil consumption after the global oil shocks in the early 1970s. The goal of the plant was to produce piped gas for Calcutta, and various smokeless fuels and other chemical products derived from coal. While Dankuni’s financial performance and efficacy has been variable, it is exactly the kind of forward-looking pilot project which should be studied and updated.

Ultimately, an Indian “coal commission” needs to articulate a credible economic future for the coal belt and the companies that exist there. If the recent electoral outcomes in MP and Chhattisgarh are any indication, the social contract around coal in those states is simply inadequate. And as the latest COP in Katowice (Poland’s coal capital) delivers another disappointing outcome, it is clear that international financing for such projects is an unrealistic expectation. Instead, if the Indian state can engage in some good old long-term planning it can anticipate and prevent the large-scale economic distress which will be experienced in eastern India with the decline of the coal industry.

Chandra is a political scientist and economic historian who studies the Indian coal and power sectors



SANJAY NAGRAL

BHARAT SOLANKI, WHO turned 20 this year, lives in a slum along the eastern side of the rail tracks in Mumbai’s suburb of Bandra. He crosses everyday to the west of Bandra to work as an apprentice mechanic in a garage.

Last year, around the time Mumbai was in the grip of the Ganesh festival, Bharat started experiencing abdominal pain and weight loss. When several courses of tablets from obliging chemists did not help, he visited a local doctor. The doctor gave painkiller injections, which would reduce the pain temporarily. Later, when I got a chance to study his case papers, it was apparent that over two months Bharat had visited several doctors. This included multiple private clinics and also the public hospital in Bandra where I head the surgery department. He had been treated with symptomatic medicines and his pleas about the lack of response were ignored.

One night in October, Bharat woke up with excruciating pain and vomiting. His family rushed him to a nearby private hospital where after an X ray, they were informed that his intestine had ruptured and he would need urgent life saving surgery. And that the treatment could cost up to Rs 5 lakh and that they would not operate unless a deposit of a lakh of rupees was paid. The family ran around pleading for help. They requested the hospital to give them time to get the money but this was turned down. Eventually, Bharat was brought to our hospitals’ casualty. He was op-

erated within a few hours. His belly was full of foul intestinal contents and there were two holes in his intestine. The abdomen was riddled with small white nodules suggesting tuberculosis. My colleagues tried to salvage the situation. However, just as we thought that the worst was over, we noticed bowel contents seeping out of his surgical wound. One of the devastating effects of TB and malnutrition is on the body’s ability to heal — one of the stitched holes in the bowel had opened out. Bharat needed multi-pronged care for what was now an intestinal fistula. This is a complication that puts huge demands on resources, which include very costly intravenous nutrition support. In India, this often means death for the poor.

Fortunately, Bharat had some things on his side — his youth, a treatable disease and committed family members. He also qualified for the Mahatma Jyoti Ba Phule Jan Arogya Yojana (previously the Rajiv Gandhi Jeevandayee Arogya Yojana), Maharashtra’s state-sponsored health insurance scheme. This enabled us to procure a specialised apparatus, which sucked out intestinal contents from the wound, costly antibiotics, intravenous TB drugs and nutrition solutions. Three months later, the hole slowly shrunk and finally closed. After three long months in hospital, Bharat was discharged.

Over the last five years, our department has treated a large number of patients with

complex surgical problems. My colleagues would tell you that the scheme benefits many of these patients. Prime Minister Narendra Modi’s Ayushman Bharat National Health Protection scheme is a grander pan national version of the scheme that helped Bharat.

Healthcare in India has traditionally relied on “schemes”, which have short-term purchase and enormous emotive impact. However, Ayushman Bharat has shifted the discourse from less emotive but vital areas like budget, infrastructure and system change to the simpler terrain of relief and philanthropy. Like in mass disasters, it’s easier to offer interim relief rather than fixing complex systems. The tertiary care component of Ayushman Bharat is essentially an act of interim relief for major illnesses.

Last week, when I reviewed Bharat, he was looking forward to resuming his work. The kind of questions that troubled me were not on his mind. Why did his neighbourhood doctor give him pain injections when he had TB brewing inside his belly? Why was the diagnosis delayed by months? Why did the private hospital demand such a large sum of money in an emergency? Why is it that a public hospital, which in any case is duty-bound to provide care for all citizens, needs a “scheme” to help procure essential drugs? And what happens to the many poor who don’t qualify under the scheme for lack of appropriate papers? For individuals like Bharat

who have been at the receiving end of a healthcare system, the bar of expectation has been set so low that what the system had done for him during the hospitalisation could have only evoked thankfulness.

As we move into a new year, I have contradictory feelings about what Ayushman Bharat’s potential. There is the hope that it will help rescue many of those who are currently caught in the tragic pincer of an inadequate public system and an unaffordable private system. But there is also the apprehension about what the scheme will do to long-term policy. If it reaps electoral benefit, it could strengthen the narrow “scheme”-centred narrative that has distracted from fundamental change. Or it could lead to a quantum jump in people’s expectations from the state and raise the bar on competitive politics. As a response to Ayushman Bharat, Rahul Gandhi was recently quoted as saying that he would implement a scheme like Britain’s National Health Scheme if voted to power. Strange as it sounds coming from a party that allowed a free run for the market in health care under its watch, it’s a leap of imagination. If Ayushman Bharat can feed into solid ideas like publicly-funded universal healthcare we may then be onto something transformative.

Nagral is a surgeon practising in Mumbai and publisher, Indian Journal of Medical Ethics

## LETTERS TO THE EDITOR

### HASINA’S TASK

THIS REFERS TO the editorial, ‘Burden of victory’ (IE, January 2). Sheikh Hasina’s Awami League has swept back to office in Bangladesh. She must now continue with her liberal economic approach, which paid rich electoral dividends. At the same time, the seasoned politician would do well to be liberal with her opponents too. Muzzling opposition has the real fear of democracy becoming farcical and degenerating into authoritarianism.

Vijai Pant, Hempur

### ABOUT DIGNITY

THIS REFERS TO the article, ‘Stories beyond MeToo’ (IE, January 1). When the writer asserts that there is nothing good in the MeToo campaign because it is being used by the women journalists to gain stardom, she forgets the fact that these women too are victims. They are raising questions about dignity and self-respect. Yes, women journalists can use this momentum to reach marginalised women but that does not mean that they should not speak for themselves.

Nirmal D Kapadia, Gandhinagar

### CONSCIENTIOUS COP

THIS REFERS TO the report, ‘IPS officer dies of suspected swine flu’ (IE, December 30). The demise of an Indian Police Service (IPS) officer, K Madhukar

### LETTER OF THE WEEK AWARD

To encourage quality reader intervention, The Indian Express offers the Letter of the Week award. The letter adjudged the best for the week is published every Saturday. Letters may be e-mailed to [editpage@expressindia.com](mailto:editpage@expressindia.com) or sent to The Indian Express, B-1/B, Sector 10, Noida-UP 201301. Letter writers should mention their postal address and phone number.

THE WINNER RECEIVES SELECT EXPRESS PUBLICATIONS

Shetty, due to a severe infection of the lungs and kidney owing to swine flu is tragic. Shetty was widely credited for clearing a series of illegal land encroachments in Chikkamagaluru, Karnataka. Shetty will be remembered for taking action against the corrupt officials, government employees and even top politicians.

Tushaar Anand, Patna

