

14 THE EDITORIAL PAGE

WORDLY WISE
THE BEST ART IS POLITICAL.
— TONI MORRISON

The Indian EXPRESS

FOUNDED BY

RAMNATH GOENKA

BECAUSE THE TRUTH INVOLVES US ALL

Because data is a public good

My resignation from National Statistical Commission was the last act in a long story of disregard for its reports



P C MOHANAN

LET US DIGRESS

Amol Palekar did not stray from the subject. But NGMA has forgotten its duty to provide space for free expression

THE INAUGURATION OF an exhibition in memory of the modernist painter Prabhakar Barwe (1936-1995) at the National Gallery of Modern Art in Mumbai has once again exposed the culture of compliance which has been developing in recent years. The actor, filmmaker and painter, Amol Palekar, had chosen the moment to voice his apprehension that as far as he knew, this would be the last exhibition at the NGMAs in Mumbai and Bengaluru organised by an advisory committee of local artists, and that henceforth all decisions might be taken by the central ministry of culture. Besides, few works would be displayed which were not in the collections of the NGMA. Upon which, NGMA director Anita Rupavatham and former chairman of the advisory committee Suhās Bahulikar interrupted him to request him to “stick to” Barwe’s work. Palekar asked if he was being censored or disallowed from speaking — and was again told to keep to the subject. He had to wind up his speech. The incident has rightly evoked shock across the country, especially on account of the stature of the speaker and the importance of the venue.

Palekar digressed from the subject after speaking almost 600 words about his friend Barwe in a written speech. It was, in fact, no digression, because he was expressing concerns about state and ideological interference in the arts that Barwe himself might have articulated, had he witnessed the art that individual freedoms have seemed to take from the time of “award wapsi” to the present. Institutions like the NGMA are expected to push back against perceived pressures, not to encourage self-censorship and expect even their guests to refrain from speaking their mind, or expressing their disquiet. This obsession with the ostensibly approved line is peculiarly Soviet, rather than Indian. An institution cannot invite speakers and expect them to cleave to an invisible line. If that is the expectation, they should invite officials who are accustomed to working within set bounds, rather than artists, whose work springs from the freedom of expression.

When he was rudely interrupted, Palekar alluded to the case of Nayantara Sahgal, who was invited to the inauguration of the prestigious Akhil Bharatiya Marathi Sahitya Sammelan in January, and then swiftly disinvited on fears that she would criticise the government. Indeed, the text of her speech objected to curtailed personal freedoms and the imposition of a uniform cultural identity on a land of diversity. To remain worthy of respect, institutions should jealously guard their intellectual space, which provides autonomy to writers and artists to express themselves freely. Especially when they digress.

AN OWN GOAL

BJP must know that serious allegations against Yeddyurappa could damage its political narrative in Karnataka

FORMER CHIEF MINISTER and the BJP’s tallest leader in Karnataka, Bookanakere Siddalingappa Yeddyurappa, 75, continues to embarrass his party. His admission that he had met the son of a JD-S legislator to discuss the possibility of his father joining the BJP has raised questions about the party’s anti-corruption narrative in the state. Last Thursday, Chief Minister H D Kumaraswamy had released audio clips to back his allegation that the BJP, specifically Yeddyurappa, offered money to lure legislators from the Congress and the BJP, and to the Speaker to enable cross-voting. Yeddyurappa had denied his involvement when the clip became public and claimed it was fake — before accepting his involvement on Sunday. The speaker of the Karnataka assembly, K R Ramesh Kumar, has asked the state government to probe the audio recording and set a deadline of 15 days. But it is not a pretty picture for the BJP in a state where it has bet big — Karnataka sends 28 MPs to the Lok Sabha.

This isn’t the first time Yeddyurappa has forced the BJP on to the backfoot. In 2010, two years after he led the BJP to victory in Karnataka, the first time the party won a state in south India, Yeddyurappa was forced to resign because of allegations of corruption. He was sent to jail and a year later, he quit the BJP to form his own outfit, the Karnataka Janata Paksha (KJP), which won nearly 10 per cent of the votes in the assembly elections that followed, costing the BJP a second consecutive term in office. Just ahead of the 2014 general election, he rejoined the BJP and after the Karnataka High Court cleared him in the corruption cases, he was reinstated as the state party chief. It seems that during his years in the wilderness, Yeddyurappa and the BJP realised that they cannot do without each other. With the KJP, Yeddyurappa proved that he commands a loyal vote, primarily among the politically influential Lingayat community; in his absence, the BJP may find it a challenge to hold on to this section, which it counts among its core vote. The BJP is also handicapped by the absence of other leaders who have a pan-state, cross-sectional appeal.

Can the BJP now look beyond Yeddyurappa? Or will it take the risk of denting its anti-corruption platform? With elections drawing near, that is one of the questions in Karnataka.

WAY OF THE FISH

An eight-metre long fish-pass in the Farakka is inadequate to sustain the hilsa’s mass migration

A LITTLE BEFORE the monsoon rains pour down, a piscine journey of astronomical significance originates in the Bay of Bengal. The hilsa leaves its home in the ocean and spawns in the estuarine waters where the rivers from India and Bangladesh meet the ocean. Large shoals of the silver-scaled fish also move slowly upstream the Padma in Bangladesh and the Ganga in India. The flavours of river and sea mingle to give the hilsa its unique sweet-salty taste. The fish that travel the farthest upriver are said to be the tastiest. Till about 40 years ago, this meant a nearly 1,200-km journey to Allahabad. But the completion of the Farakka barrage in 1975 disrupted the hilsa’s westward migration. A navigation lock in the barrage hindered the fish’s free movement. Hilsa aficionados in India are never tired of lamenting that the last hilsa was caught at Buxar, near Allahabad, more than 30 years ago. On February 8, Union River Development Minister Nitin Gadkari inaugurated a project that aims to assuage their hurt feelings. The lock will be redesigned, at a cost of Rs 360 crore, to let the hilsa return to its spawning grounds of yore.

The new fish pass is expected to be complete by June, when the bony fish begins its journey to the river. Its gates will be opened between 1 and 5 pm, which is known to be the time for peak hilsa movement. The trouble, however, is that the fish-way will span no more than eight metres of the Ganga’s nearly 2 km width at Farakka. It’s anybody’s guess if that is enough to sustain the hilsa’s mass migration.

US ecologist John Waldman’s study in 2013 showed that only 3 per cent of a shoal use a pass to get past a dam. In what should be of salience to the ministry’s new project, one of the fish studied by Waldman is the American shad, a species closely related to the hilsa. A few silver-coloured fish may still sneak in through the new pass. But that is unlikely to undo the culinary damage caused by the Farakka barrage.

WILLIAM SETZER, in the working paper, “Politics and Statistics: Independence, Dependence or Interaction”, published by the UN, lists several possible areas where political interference in official data generation and publication can happen. One of these is the extent and timing of release of data. He cites several examples. Most of the instances quoted by him fortunately happened in the past and in countries not following a democratic political system. However, generation of official statistics with independent oversight was recognised as a key requirement for ensuring data credibility in India from the very beginning. Successive governments have made efforts to create institutions to safeguard the integrity and objectivity of official statistics and recognised official data as a “public good”. The present government also notified in the official gazette the acceptance of a set of principles called the fundamental principles of official statistics that is accepted as the bedrock of an independent statistical system.

The first of the fundamental principles of official statistics notified by the government of India states that “Official statistics provide an indispensable element in the information system of a democratic society, serving the government, the economy and the public with data about the economic, demographic, social and environmental situation. To this end, official statistics that meet the test of practical utility are to be compiled and made available on an impartial basis by official statistical agencies to honour citizens’ entitlement to public information.”

The National Statistical Commission (NSC) was one of the two most visible outcomes of the report of C Rangarajan on the Indian Statistical System, submitted in 2001. The report was commissioned by the Atal Bihari Vajpayee government recognising the increasing importance of official statistics in a world that was getting integrated economically. Credible data was required not only for national governments but also sought by multilateral agencies for inter-country comparisons, as well as for investment decisions by private corporates. The other outcome was the creation of a position called the Chief Statistician of India (CSI) with a fixed tenure and to be selected from a panel given to the

government. The idea was that the CSI heading the Central Statistical Office would be a professional and not a career bureaucrat. The NSC was to be the apex body for all statistical matters with a very wide mandate.

My resignation from the NSC along with J V Meenakshi, its only other non-official member, was the last act in a long story of disregard for the commission’s recommendations, reducing its effectiveness. Many of these instances are noted in the last two annual reports submitted to the government by the commission. The claim of the ministry, that we did not bring these grievances to their notice, clearly brings out the truth that nobody in the ministry cared to read these reports. These reports are supposed to be placed in Parliament along with an action taken report by the ministry of statistics.

The resignation and the government response to the leaked report has brought into question the autonomy enjoyed by the National Sample Survey Office (NSSO). The National Sample Survey (NSS), initiated in 1950, as a nation-wide survey operation, was initially handled by the Indian Statistical Institute and the Directorate of NSS under the government of India. All aspects of survey work were brought under a single umbrella by setting up the National Sample Survey Organisation (NSSO) through a cabinet resolution in March 1970. Since then, the NSSO has been functioning under the overall direction of a Governing Council with autonomy in the matter of collection, processing and publication of survey data, thus ensuring freedom from political and bureaucratic interference. Subsequent to the setting up of the NSC, the council was dissolved and its responsibilities given to the NSC.

One of the reasons for our resignation was the non-release of a survey report prepared by the NSSO and approved by the commission to be released in December 2018. The release date was decided in consultation with the NSSO almost a year ago. Generally, the NSSO produces three to four reports every year and these are routinely approved by the commission and released by them thereafter. The special attention paid to this report by the ministry was possibly because it implicitly contradicted some of the claims of the government. Unfortunately,

in this process, fundamental questions on the independence of statistical agencies have come to the fore and as the acting chairman I felt it my duty to leave the commission rather than acquiesce to the deliberate slighting of the NSC. Meenakshi also took the same view.

Efforts were made to suggest that the report was only a “draft” and the final approval was to be given by the government and later on a series of questions on the methodology were also raised. Surprisingly, it was the NITI Aayog, and not the Chief Statistician whose job it is to uphold the integrity of the official statistics, that took the initiative to raise technical doubts on the report and the survey methodology. A similar involvement of the NITI Aayog in the release of the GDP back series had also raised questions.

Questioning the report is perhaps the first step in the standard government response to such situations and the next step possibly would be to refer the report and methodology to a committee of experts, only to delay the report. Modifying survey estimates would amount to changing the standard procedures based on sound statistical theory.

The NSSO has been the most transparent statistical organisation anywhere in the world, with independent experts outside the government actively involved in all stages of survey work and access to the micro data given to all researchers at a nominal charge. The vast number of research papers that followed this unrestricted access to survey data is testimony to the willingness of the NSSO to be questioned by independent researchers and the acceptance of NSSO data (with all its known limitations) as one of the best sources for economic and social research in India.

The report based on a new series of surveys on employment was coming after a gap of six years. The lack of data on employment had even been commented upon by the Honourable Prime Minister. The report and the survey data would have contributed to our understanding of the economic and social transformation taking place in the country and known to have accelerated in recent times. This opportunity is now delayed.

The writer is former head of the National Statistical Commission

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RAKSHIT SONAWANE

A REGRESSIVE QUOTA

Economic reservation mocks the ameliorative spirit behind the system

THOUGH THE decision of the Narendra Modi government to grant 10 per cent reservation for the general category appears to be a political gimmick to appease upper castes in an election year, it is actually a historic ploy to turn back the wheels of social justice. Assuming that it clears legal hurdles, it will create double jeopardy for the SC, ST and OBC categories, besides pitting the poor in the general category with the middle class (with annual income upto Rs 8 lakh). The decision makes a mockery of the spirit behind the quota system.

Reservation is not a poverty alleviation scheme. Affirmative action came into existence to provide adequate representation for the untouchables, who were historically discriminated against. Tribals and OBCs, who were at the bottom of the caste system, have also been granted the benefit.

The ancient caste system worked in favour of the upper castes (15 to 20 per cent of population), which have traditionally monopolised scholarship, priesthood and dominated trade/industry. The quota system prescribed in the Constitution sought to render social justice by taking on that system in which upper castes had enjoyed reservation with divine sanction. The reservation granted by the Constitution is based on caste because certain people were exploited on the basis of their caste status. Caste prejudice is an inherent part of the orthodox Hindu psyche, which manifests in wide acceptance of other kinds of reservation (like women, senior citizens and

the physically handicapped getting reserved seats in public transport). However, caste-based quota invites opposition, despite the fact that the beneficiaries are socially handicapped.

The Constitution has paved the way for several poverty alleviation schemes, which are already in force. For instance, people living below the poverty line (BPL) are entitled to essential commodities at subsidised rates, while poor students are entitled to scholarships. With eligibility limit for the new quota of 10 per cent placed at Rs 8 lakh per annum, it is still unclear whether the BPL would be raised. Besides, the new definition of poor (of annual income upto Rs 8 lakh) would cover a large number of middle-class people, who would be eligible to compete with their BPL counterparts. With the ubiquitous quota, are we heading for a 100 per cent reservation for all communities as per their population?

The new quota also jeopardises the interests of SCs, STs and OBCs. First, the upper castes would retain their traditional monopolies in professions such as priesthood and trade. Second, they will get 10 per cent reservation in education and government employment. Considering that the stipulated upper limit for quota for the lower castes (75 per cent of population) is 50 per cent, while the upper castes, which are in minority (below 20 per cent of population) have 50 per cent of seats in general category, this makes it a highly uneven playing field.

To make it a level playing field, sectors mo-

nopolised by upper castes should be opened to all. For instance, priesthood must be delinked from caste and made available to all deserving individuals. Similarly, the dominance of certain communities in business needs attention. Also, since government employment is shrinking (because of privatisation), opportunities in the private sector should be subjected to affirmative action.

Looking at it from the perspective of B R Ambedkar’s theory of ‘Revolution and Counter-Revolution’, the Modi government’s decision is a counter-revolution to augment the dominance of upper castes and turn back the wheels of social justice. According to Ambedkar, the history of ancient India is history of struggle between Brahminism and Buddhism. He termed Buddhism as a revolution that propounded egalitarian values. The assassination of Brihadra (descendant of emperor Ashoka) and the revival of Brahminism was described by Ambedkar as “counter-revolution”. When India became a republic, another revolution was ushered in through egalitarian principles enshrined in the Constitution. He went a step further, to embrace Buddhism with his followers. The Constitution started a bloodless revolution in 1950 in the country, much to the chagrin of traditional hardliners wanting to start a counter-revolution to ensure the supremacy of the upper castes.

The writer is a senior journalist based in Mumbai

FEBRUARY 12, 1979, FORTY YEARS AGO

UP RSS BAN

NARENDRAJIT SINGH, UP RSS chief, said the ban would not deter the RSS from holding its shakhas. He said if arrests were made, the organisation would hold peaceful satyagraha and court arrests. Ganga Bhakta Singh, vice president of the state Janata Party and Lok Sabha MP, said the government’s decision was in violation of the election manifesto of the Janata Party. He said the ban provided the proof of an alliance between Indira Gandhi and Raj Narain.

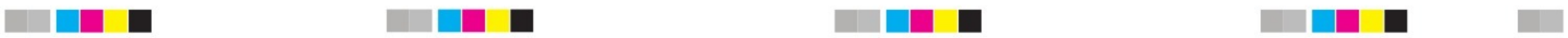
Deshmukh said the ban on the RSS drills by the UP government betrayed authoritarianism. Deshmukh said since the RSS was not born out of fear, it could also not wind up out of any kind of fear. He said a recent dispatch by Tass on the RSS activities was “unfortunate” and said the opinion expressed by a Soviet agency constituted an interference in the internal affairs of India.

JANATA CHIEF DISAGREES CHANDRA SHEKHAR, JANATA Party President, said the UP government’s decision to ban the RSS shakhas in parks and other public places “smacked of vindictiveness -

under the present circumstances”. He said even during the days of Indira Gandhi, when the question of banning the RSS came up, he had said that it would not help.

IRAN TURMOIL

IRAN PRIME MINISTER Shahpour Bakhtiar has drafted his resignation after military commanders announced they had withdrawn their support for the Shah-appointed government. His aides said he could no longer continue without military support. The 62-year-old prime minister took office 38 days ago after Shah Mohammad Reza Pahlavi agreed to leave the country.



15 THE IDEAS PAGE

All is still not well in court

Over a year after an unprecedented press conference by senior judges flagged the challenges, opacity and lack of accountability remain pressing concerns



AJIT PRAKASH SHAH

A LITTLE OVER a year ago, four judges of the Supreme Court of India called an unprecedented press conference to tell the world that everything was not right with the judicial system. Their announcement posed troubling questions relating to the independence of the judiciary, transparency and accountability in the institution and so on. Three of the judges have since retired, and the fourth, Justice Ranjan P Gogoi, has become the Chief Justice of India (CJI). Around the time he took over, in a much-publicised speech, he also spoke about his vision of justice. A lot has happened in the year gone by for the Indian judiciary. Certain developments are of particular concern to me, which I discuss here.

The first major issue is the idea of the CJI as the "master of the roster". The previous CJI was criticised by many for the manner in which cases were allocated to judges under his watch, and for selectively choosing the benches that would hear cases of public importance. In democratic countries around the world, notably in the UK, Canada and Australia, the allocation of work and the selection of benches is a consultative process, and necessarily involves a culture of trust.

Alternatively, there are clear and defined rules in this regard, as, for example, in the European Court of Human Rights and the European Court of Justice. It is not acceptable for the chief justice to have unbridled power. Even in high courts in India, where a chief justice may have official roles such as presiding over administrative meetings, at no point is the chief justice considered or made to believe that he/she is superior to other judges in the court. The sanctity of this principle cannot be overstated: A former chief justice of the South Korean Supreme Court was recently arrested for having allegedly used his influence when he was in office on behalf of conservative governments to delay trials in war-related compensation cases. Unfortunately, in India, the trend of the CJI assuming the role of master of the roster, with unbridled and unrestricted power, continues even under the present CJI, which may have disturbing implications for the dispensation of justice in our country. Urgent reforms in this regard are necessary.

The second issue is of how appointments to and transfers within the higher judiciary continue to be made. Every time a new cohort of judges is announced for selection, a new set of problems emerges. It is almost as though the Supreme Court Collegium is showing us the many paths to opacity that can exist in the appointments process. Two incidents over the past month have been particularly distressing.

One relates to a recent proposal to transfer a sitting judge of the Delhi High Court, whose decisions have been attacked by those within or close to the present Union government. While the transfer was not finally approved, it bodes ill for a judiciary that prides itself in being independent of influence and the other arms of the state.

Another case is the inexplicable reversal of a decision of the collegium to elevate two high court chief justices, both well-regarded as fine judges, to the Supreme Court. A "leak", purportedly from an "official source", in a



C R Sasikumar

leading news publication suggested that this reversal was apparently because certain "adverse material" against these judges had emerged. Ideally, any such material should have been put to these judges in a formal setting, and they ought to have been allowed to defend themselves. Instead, these two judges, along with two others — all high up in the seniority list of high court judges — were bypassed, and relatively junior judges were pushed up the ladder. Unfortunately, such leaks and last-minute reversals can damage the morale of members of the judiciary.

Equally problematic is the overwhelming silence of the government. On an earlier occasion, the same government had staunchly defended the seniority convention in judicial appointments. What happened now? The government, by swiftly approving the latest recommendations, has revealed how hypocritical it, too, can be. This is not to say that I defend the seniority convention. But, at the very least, the government should have been consistent in its position.

I have frequently expressed my views on the workings of the collegium and I believe that the collegium system should go completely. But even if the judiciary is not inclined to revise its position on the appointments process, the present situation could be improved slightly if the Memorandum of Procedure for making judicial appointments were finalised.

More problematically, I worry that not enough attention is being paid to the judiciary as an institution. Ideally, in any democratic set-up, we need the best individuals running the judiciary. In my opinion, one important criterion for selecting judges is merit. But as has been seen, many brilliant judges are overlooked. The appointments of judges on grounds other than merit can be self-perpetuating. Many such appointees will become members of the cabal that is the collegium, and may make the same kinds of choices their seniors made. Short-term decisions to appoint certain individuals affect the long-term condition of the judiciary. We are now in a position where we can predict that the health of the Supreme Court, and the judiciary, will not be in great shape. We should all be very worried.

The third issue that concerns me is the recent fascination of the Supreme Court for the

The appointments of judges on grounds other than merit can be self-perpetuating. Many such appointees will become members of the cabal that is the collegium, and may make the same kinds of choices their seniors made. Short-term decisions to appoint certain individuals affect the long-term condition of the judiciary. We are now in a position where we can predict that the health of the Supreme Court, and the judiciary, will not be in great shape. We should all be very worried.

WHAT THE OTHERS SAY

"The US president's 'jokes' in about Native American genocide in relation to the Democrat Senator (Elizabeth Warren) provide a glimpse into his growing fears about his waning base." —THE INDEPENDENT

A dialogue, an opportunity

US commerce secretary's visit could be an occasion for Delhi and Washington to heed the lessons of the past, ease trade tensions



RAJA MANDALA

BY C RAJA MOHAN

TRADE ISSUES ARE not a formal part of this week's dialogue in Delhi between the visiting US Commerce Secretary Wilbur Ross and Union Commerce Minister Suresh Prabhu. But there is no doubt that mounting trade tensions between India and the US have cast a dark shadow over the talks. The immediate danger is that the US might withdraw India's trade benefits under the so-called Generalised System of Preferences that Delhi has enjoyed since the mid-1970s.

Yet, this week's dialogue must be seen as an opportunity to step back from confrontation and take a more strategic approach to resolving the current differences over a large number of issues. They include market access, reciprocity in tariffs, trade deficit, predictable investment rules and data localisation to mention a few. Over the last two decades, Delhi and Washington have dealt with and resolved far more complex issues. If Prabhu and Ross recall the basic lessons from the transformation of this relationship, they can arrest the current drift and start finding a way out.

The first is to recognise the value of the trade relationship between the two countries and its huge potential. There was a time, less than two decades ago, when "flat as a chapati" was the preferred label for US-India trade relations. Since then, the annual two-way trade has grown rapidly to touch nearly \$130 billion last year (including trade and services).

For India, the US is probably the most important trade partner today and will remain so for a long time. For Washington, the size of the trade volume with India is quite low in comparison with its other key partners like Canada, Mexico, the European Union, Japan and China. But the potential remains high as India emerges as the world's third-largest economy. It should, therefore, be the highest political priority for India and the US to turn this trade relationship into a deeper and more sustainable one.

Second, both countries need to be sensitive to the domestic political considerations. As India enters the election mode, this is perhaps the worst possible moment for the US to take actions like the withdrawal of GSP benefits. The volume of Indian exports involved is quite small, but the political impact could be way out of proportion.

That public pressure is not the best way to negotiate with India is a dictum that President Donald Trump's recent predecessors in Washington understood well. On its part, Delhi needs to pay greater attention to the profoundly altered environment in Washington on trade related issues.

Trump has begun to turn America — for long, the champion of "free trade" — into an advocate of "fair trade". Trump has convinced himself that the rest of the world has taken advantage of America's open market. He is now ready to bring the whole

house down if the rest of the world does not address his grievances. India must bet Trump's concerns about trade outlast his stint as US president. As the Democratic Party moves left of centre, the American concerns about fair trade can only become more intense in the years ahead.

Third, it is quite easy to forget the personal role of the Indian prime minister and the US president in turning the two "estranged democracies" into "indispensable strategic partners" in the 21st century. In India, successive Prime Ministers Atal Bihari Vajpayee, Manmohan Singh and Narendra Modi chose to defy conventional political and bureaucratic wisdom to advance the country's relationship with the US.

Washington has little reason to politically embarrass Prime Minister Modi — who has moved the security and political relationship beyond any one's imagination — on trade issues just before a tough general election. Delhi, on the other hand, should appreciate the great political value of a trade deal with India for Trump and the importance of having the White House on India's side.

Indian officials who negotiated the complex nuclear deal can recall how George W Bush repeatedly overruled objections of his cabinet colleagues and national security aides to facilitate the resolution of difficult issues in India's favour. On its part, Delhi must recognise goodwill earned with Trump can easily compute into his valuable support for Delhi on other important issues.

Finally, the secret to successful engagement with the US involves two simple propositions — never stop negotiating and keep making deals small or big. India often can't close a negotiation because it's opening bid tends to remain the final position. Americans, on the other hand, are always open to splitting the difference, finding a compromise and moving on.

It was with the ability to give and take, while keeping the larger and long-term interests in mind, that India and the US were able to overcome the multiple problems in the nuclear and defence negotiations during the last two decades. Continuous forward movement — however slow and incremental — is critical.

Unlike security issues, trade is not a zero-sum-game and should be more amenable to deal-making. No one understands this better than the Chinese President Xi Jinping, who continues to tease Trump with the prospects of a deal despite the expanding range of political and economic contention. The issues at stake between Trump and Xi are much harder than those holding up progress in the India-US trade talks.

Given the return of geopolitical confrontation and the unfolding rearrangement of the global trading order, "doing nothing" is not an option for Delhi. If the spirit of Valentine's Day prevails — Prabhu and Ross are meeting on February 14 — there would be much room for political reassurance and confidence building between India and the US on trade issues.

The writer is director, Institute of South Asian Studies, National University of Singapore and contributing editor on international affairs for The Indian Express



G S BAJPAI

What witnesses really need

Witness Protection Scheme does not recognise the many pressures on them

WITH TWO RECENT developments, some crucial questions relating to witnesses came to the surface. First, the Supreme Court (SC), while hearing a PIL in *Mahendra Chavla and Ors*, approved the Centre's draft Witness Protection Scheme (WPS). Second, all accused in the Sohrabuddin case were acquitted. In the latter, 88 witnesses out of a total of 212 who were examined by the court turned hostile.

The SC has asked the states to implement the WPS till Parliament comes out with legislation in this matter. In principle, this measure is laudable. However, the scheme falters with respect to the core concerns and issues that witnesses face in their day-to-day interactions with the courts. The draft scheme, prepared by the National Legal Services Authority (NALSA) and Bureau of Police Research and Development (BPRD), does not seem to be premised on any empirical study and, therefore, the deeper insights about the varied sufferings and consequences of being a witness remain unaddressed.

The core of the WPS remains the security to witnesses. An almost crude estimate suggests that not more than 20 per cent of all witnesses require this kind of a protection measure. In cases involving terrorist acts, organised crime and powerful people with connections and resources, there may be a dimension of security. However, a vast majority of cases in

the lower courts wherein witnesses refuse to be present or become hostile involve certain other factors which need to be appreciated.

The WPS relies heavily on concealing the identity of witnesses and undertaking a detailed threat analysis report, to be prepared by the police. Both things look quite uncertain in the present context. Given the way the police and prosecution work in this country, the idea of hiding the identity of a witness as a measure of protection does not seem to be practical. Overworked and understaffed, the police are also unlikely to make any meaningful threat analysis for a witness. A police force which roughly devotes only 20 per cent of its time to investigative work would be justifiably right in avoiding this task. Therefore, ensuring and "executing" a "Witness Protection Order" under the WPS by the police appears to be unlikely. The lower courts, where all the witnesses have to appear, do not have the infrastructure to satisfy the mandate of the present WPS. Nor can they do much to avoid contact between the witness and the accused. The in-camera trial arrangements in all such cases also have the same issue. The most problematic and unrealistic factors in this scheme are the arrangements to change identity and relocate witnesses. Even in the rarest of rare cases, the witnesses would perhaps not like this to happen to them. This borrowed idea —

devoid of empirical understanding — does not fit Indian conditions.

This brings us to the search for the real picture based on hard data and a workable arrangement rooted in the Indian conditions.

What we actually need is a "Witness Assistance Programme". A study conducted by this author based on 800 witnesses in the premises of courts in Madhya Pradesh, Uttar Pradesh, Rajasthan, Maharashtra and Karnataka clearly revealed that a vast majority of witnesses do not need protection — they require more assistance, care and dignity. Moreover, the need is to understand and take into account the fact that witnesses are also a harassed lot, who at times are dealt with much like the accused.

The major source of harassment for the witnesses stemmed from the frequent adjournment of cases, which was confirmed by 65 per cent witnesses in the said study. As many as 80 per cent of witnesses also reported monetary loss and other kinds of deprivation due to their repeated appearances in the courts. Around 65 per cent of the witnesses reported frequencies of adjournments.

The profile of witnesses also offers crucial insights. A majority of witnesses before the courts are wage-earners, agriculturists, the not so well-educated, or belonging to Scheduled Castes. Many have health issues. In

most cases, they were unaware of the consequences of being a witness. In 40 per cent of the cases, they were persuaded through social or caste-related pressure to assist to being witnesses. Most crimes in India take place amongst people known or related to each other and, consequently, the witnesses also shares some relationship with both the victim and the accused. Thus, giving statements in favour or against a particular party casts tremendous pressure on the witness, generally of a social or caste-related nature.

While in around 40 per cent cases the witnesses reported threats or being manhandled, this was not of a magnitude that would imply the need for police protection or relocation. A vast number — 44 per cent — complained of an unfair deal meted out to them by agencies like the police, prosecution or the courts. The admissible allowance for the appearance of witnesses before the court was not only meagre but also was difficult to claim, as reported by a majority of the witnesses in this study. In view of this, the present WPS needs a complete shift in focus to make it rights-based rather than security-centric.

The writer is chairperson, Centre for Criminology & Victimology at National Law University, Delhi. He is the president of Indian Society of Victimology

LETTERS TO THE EDITOR

DOUBLE TROUBLE

THIS REFERS TO the editorial, 'The spectacle' (IE, February 5). A political slugfest between West Bengal CM Mamata Banerjee and the BJP government at the Centre has created a constitutional crisis. The tussle between the CBI and the Bengal government over Kolkata police commissioner Rajeev Kumar's role in the Saradha scam probe has thrown up an alarming fact — IPS officers toeing the line of their political masters. The CBI's attempted swoop may have been politically motivated, but the WB police clearly misused their authority.

Lal Singh, Amritsar

AN HONEST MAN

THIS REFERS TO the article, 'Modi's farewell speech' (IE, February 10). I have observed that of late it has become fashionable to blame Narendra Modi for whatever wrongs (so called) that happen in the country. Modi has become a target for intellectuals.

Veena Shenoy, Thane

RIGHT SAID THE POPE

THIS REFERS TO the article, 'The Pope, the Dharamaraja' (IE, February 9). No faith professes hatred towards others but instead of promoting the positives, most of the major religions have misused their essence to divide the people.

The writer is chairperson, Centre for Criminology & Victimology at National Law University, Delhi. He is the president of Indian Society of Victimology

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 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

Pope Francis's message during his recent visit to the UAE — that all faiths must unite and religious extremism, intolerance, ideological and cultural bigotry must be shunned is highly commendable. No human progress, social welfare and prosperity is possible without harmony and peace in society.

MN Bhartiya, Goa