Sucking up surplus

SEBI needs financial autonomy to remain effective as the chief markets regulator

The Centre's decision to clip the wings of the Securities and Exchange Board of India has not gone down too well with its members. Yet, the Centre is refusing to budge. In a letter dated July 10, SEBI Chairman Ajay Tyagi said the Centre's decision to suck out SEBI's surplus funds will affect its autonomy. SEBI employees had also written to the government with the same concern. As part of the Finance Bill introduced in Parliament, the Centre had proposed amendments to the Securities and Exchange Board of India Act, 1992 that were seen as affecting SEBI's financial autonomy. To be specific, the amendments required that after 25% of its surplus cash in any year is transferred to its reserve fund, SEBI will have to transfer the remaining 75% to the government. On Friday, the government rejected the plea from SEBI's officials asking the government to reconsider its decision, thus paving the way for further conflict. *Prima facie*, there seems to be very little rationale in the government's decision to confiscate funds from the chief markets regulator. For one, it is highly unlikely that the quantum of funds that the government is likely to receive from SEBI will make much of a difference to the government's overall fiscal situation. So the amendment to the SEBI Act seems to be clearly motivated by the desire to increase control over the regulator rather than by financial considerations. This is particularly so given that the recent amendments require SEBI to seek approval from the government to go ahead with its capital expenditure plans.

A regulatory agency that is at the government's mercy to run its financial and administrative operations cannot be expected to be independent. Further, the lack of financial autonomy can affect SEBI's plans to improve the quality of its operations by investing in new technologies and other requirements to upgrade market infrastructure. This can affect the health of India's financial markets in the long run. In the larger picture, this is not the first time that the government at the Centre has gone after independent agencies. The Reserve Bank of India and the National Sample Survey Office have come under pressure in recent months, and the latest move on SEBI adds to this worrisome trend of independent agencies being subordinated by the government. The Centre perhaps believes it can do a better job of regulating the economy by consolidating all existing powers under the Finance Ministry. But such centralisation of powers will be risky. Regulatory agencies such as SEBI need to be given full powers over their assets and be made accountable to Parliament. Stripping them of their powers by subsuming them under the wings of the government will affect their credibility.

A new beginning

The pact between the military and civilian protesters may help Sudan turn a democracy

Sudan's ruling military council and representatives of the pro-democracy movement have signed a power-sharing agreement, signalling that its disputed transition to civilian rule is on track. Ever since President Omar al-Bashir's fall in April amid anti-regime protests, the military leaders who seized power and the protesters have been on a confrontational path. The protesters' demand for an immediate transfer of power to a civilian transitional government to be followed by free and fair elections was resisted by the powerful, deeply entrenched military. As the stand-off continued, a paramilitary unit attacked protesters in Khartoum on June 3, killing at least 128 people. But protesters still didn't give up. This, along with pressure from the African Union and foreign countries, appears to have convinced the generals they could not anymore amass absolute power, as they did under Mr. Bashir's three-decade-long rule. Ethiopian and African Union mediators brought both sides for talks and they reached the power-sharing agreement. Under the deal, a sovereign council of 11 members – five military and five civilian members and one to be selected based on consensus – will rule for over three years. A general will lead it for the first 21 months and a civilian leader for 18 months. The security apparatus will be controlled by the military; the ministries will get civilian leaders.

While this agreement clearly charts a new course for the crisis-hit country, it doesn't guarantee a smooth transition from military to civilian rule. There still exists deep distrust between the generals and the pro-democracy movement. When protests erupted in December over soaring food prices, Mr. Bashir used multiple tactics, from oppression to introducing changes in the Cabinet, to control the situation. But he had to go as the generals turned against him in April. The military council then had an opportunity, like the military in Tunisia after the fall of the dictator Zine El Abidine Ben Ali in January 2011, to return to the barracks and let the civilian leadership assume power and shape the country's future. But Sudan's military not only refused to give up its powers but also massacred the protesters who challenged them. Even though both sides have now agreed to share power, the finer details of the agreement are yet to be hammered out. It is to be seen how the transitional government would find a balance between the military's quest to retain its privileges and the revolutionaries' demand for change. It is still not clear whether the military is ready to support a full democratic transition. The framing of a new Constitution will be another challenge as there are different power centres with conflicting interests. More important, there has to be an independent investigation into the June 3 violence, and whoever is responsible should be brought to justice. Then it will at least be a good beginning for a long journey to democracy and accountability.

The tremor of unwelcome amendments

The Right to Information (Amendment) Bill is a twin attack on accountability and the idea of federalism

ARUNA ROY & NIKHIL DEY

"Amendments" have haunted the Right to Information (RTI) community ever since the RTI Act came into effect almost 14 years ago. Rarely has a law been so stoutly defended by activists. It is not possible to pass a perfect law. But it was a popular opinion strongly held by most RTI activists that a demand for progressive amendments could be used as a smokescreen by the establishment to usher in regressive changes.

Nevertheless, the sword of Damocles of regressive amendments has hung over the RTI with successive governments. Amendments have been proposed since 2006, just six months after the law was implemented and many times thereafter. Peoples' campaigns, through reasoned protest and popular appeal, have managed to have them withdrawn.

The proposed amendments tabled in Parliament on July 19, 2019 have been in the offing for some time now. In the form of the Right to Information (Amendment) Bill, 2019, they seek to amend Sections 13, 16, and 27 of the RTI Act which carefully links, and thereby equates, the status of the Central Information Commissioners (CICs) with the Election Commissioners and the State Information Commissioners with the Chief Secretary in the States, so that they can function in an independent and effective manner. The deliberate dismantling of this architecture empowers the Central government to unilaterally decide the tenure, salary, allowances and other terms of service of Information Commissioners, both at the Centre and the States. Introducing the Bill in the Lok Sabha, the Minister of State for Personnel, Public Grievances and Pensions, Jitendra Singh, asserted that this was a benevolent and minor mechanism of rule-making rather than a basic amendment to the RTI law.

Agent of change

Why is there unseemly haste and determination to amend the law? Some feel that it is because the RTI helped with the cross-verification of the affidavits of powerful electoral candidates with official documents and certain Information Commissioners having ruled in favour of disclosure. It is unlikely to be a set of instances but more the fact that the RTI is a constant challenge to the misuse of power. In a country where the rule of law hangs by a slender thread and corruption and the arbitrary use of power is a daily norm, the RTI has resulted in a fundamental shift – empowering a citizen's access to power and decision-making. It has been a lifeline for many of the 40 to 60 lakh ordinary users, many of them for survival. It has also been a threat to arbitrariness, privilege, and corrupt governance. More than 80 RTI users have been murdered because their courage and determination using the RTI was a challenge to unaccountable power.

The RTI has been used brilliantly and persistently to ask a million questions across the spectrum – from the village ration shop, the Reserve Bank of India, the Finance Ministry, on demonetisation, non-performing assets, the Rafale fighter aircraft deal, electoral bonds, unemployment figures, the appointment of the Central Vigilance Commissioner (CVC), Election Commissioners, and the (non)-appointment of the Information Commissioners themselves. The information related to decision-making at the highest level has in most cases eventually been accessed because of the independence and high status of the Information Commission. That is what the government is trying to amend.

GETTY IMAGES/ISTOCKPHOTO

The RTI movement has struggled to access information and through it, a share of governance and democratic power. The Indian RTI law has been a breakthrough in creating mechanisms and platforms for the practice of continual public vigilance that are fundamental to democratic citizenship. The mostly unequal struggle to extract information from vested interests in government needed an institutional and legal mechanism which would not only be independent but also function with a transparency mandate and be empowered to over-ride the traditional structures of secrecy and exclusive control. An independent Information Commission which is the highest authority on information along with the powers to penalise errant officials has been a cornerstone of India's celebrated RTI legislation.

Part of checks and balances

The task of the Information Commission is therefore different but no less important than that of the Election Commission of India. Independent structures set up to regulate and monitor the government are vital to a democratic state committed to deliver justice and constitutional guarantees. The separation of powers is a concept which underscores this independence and is vital to our democratic checks and balances. When power is centralised and the freedom of expression threatened no matter what the context, democracy is definitely in peril. That is perhaps why these set of amendments have to be understood as a deliberate architectural change to affect, in a regressive manner, power equations, the freedom of expression and democracy. The Commission which is vested by law with status, independence and authority, will now function like a department of the Central government, and be subject to the same hierarchy and demand for obeisance. The decision of the government to usurp the powers to set the terms and conditions of service and salaries of an independent body must be understood as an obvious attempt to weaken the independence and authority granted by the law.

Apart from Section 13 which deals with the terms and conditions for the Central information Commission, in amending Section 16, the Central government will also control through rules, the terms and conditions of appointment of Commissioners in the States. This is an assault on the idea of federalism.

Opaque moves

All the provisions related to appointment were carefully examined by a parliamentary standing committee and the law was passed unanimously. It has been acknowledged that one of the most important structural constituents of any independent oversight institution, i.e. the CVC, the Chief Election Commission (CEC), the Lokpal, and the CIC is a basic guarantee of tenure. In the case of the Information Commissioners they are appointed for five years subject to the age limit of 65 years. It was on the recommendation of the parliamentary standing committee that the Information Commissioner and CIC were made on a par with the Election Commissioner and the CEC, respectively. The manner in which the amendments are being pushed through without any citizen consultation, bypassing examination by the standing committee demonstrates the desperation to pass the amendments without even proper parliamentary scrutiny. The mandatory pre-legislative consultative policy of the government has been ignored. Previous governments eventually introduced a measure of public consultation before proceeding with the amendments. In fact, both the United Progressive Alliance and the National Democratic Alliance put out proposed amendments to the RTI rules on the website for public deliberation. But the present regime seems determined to pass these amendments to the law itself without any consultation.

The reason is not far to seek. If the amendments are discussed by citizens and RTI activists in the public domain, it would be apparent that these amendments fundamentally weaken an important part of the RTI architecture. They violate the constitutional principles of federalism, undermine the independence of Information Commissions, and thereby significantly dilute the widely used framework for transparency in India.

The RTI community is worried. But the sword of Damocles is double-edged. It is an idiom originally used to define the hidden insecurity of an autocrat. Questions are threats to unaccountable power. The RTI has unshackled millions of users who will continue to use this democratic right creatively and to dismantle exclusive power. The RTI has been and will be used to withstand attacks on itself and strengthen the movement for transparency and accountability in India. Eventually, the Narendra Modi government will realise that while it might be able to amend a law, it cannot stop a movement.

Aruna Roy and Nikhil Dey are social activists who work with the Mazdoor Kisan Shakti Sangathan and the National Campaign for People's Right to Information

An ally, a partner and American unilateralism

There are major differences but also similarities in the U.S.'s response to Russia's S-400 deals with Turkey and India

MOHAMMED AYOOB

The decision by the United States to terminate Turkey's participation in the F-35 joint strike fighter project and its threat to impose economic sanctions on Ankara under Countering America's Adversaries Through Sanctions Act (CAATSA) in response to the Turkish decision to buy Russian S-400 air defence systems has close parallels to the predicament facing India on the same issue. There are major differences in the two cases, but there are also remarkable similarities.

Turkey has been a long-standing member of the North Atlantic Treaty Organisation and an integral part of the American-led alliance whose principal goal was and continues to be to prevent the expansion of Russian influence and power. It was also seen as the principal gateway for the projection of American power in West Asia, especially in Syria and Iraq, through the Incirlik airbase. The U.S. and other members of NATO are worried that a Russian military relationship with Turkey could provide Moscow access to the technological secrets underpinning NATO's most sophisticated weapon systems. In a statement, the White House said, "The F-35 cannot coexist with a Russian intelligence collection platform that will be used to learn about its advanced capabilities." Ankara has remained defiant and the first deliveries of components of the S-400 systems arrived in Turkey earlier this month.

Largely counter-productive

Turkey's decision to acquire the Russian systems emanated in part from the American refusal under the Barack Obama administration to sell it the Patriot anti-missile system that Ankara considered essential for its air defence in the context of the Syrian civil war. Turkey's forced ejection from the F-35 project now could also turn out to be counterproductive. Reports suggest that Turkey is planning to buy advanced Sukhoi fighter jets (the Su-35 and/or the Su-57) from Russia to compensate for the loss of the F-35 planes, thus further complicating the issue of NATO interoperability.

Although tensions in the relations between the U.S. and Turkey had become increasingly evident in the past couple of years, especially over the American support to the Syrian Kurdish force fighting the Islamic State, the YPG, which Turkey considers an extension of the secessionist PKK, Ankara and Washington are formal allies as members of NATO.

REUTERS/VITALY NEVAR/FILE PHOTO

The Indian deal

The Indian case is very different. While it is true that the U.S. now considers India a "strategic partner", principally because it views New Delhi as a counterweight to expanding Chinese influence in the Asia-Pacific region, India has never been a formal ally of Washington. From Jawaharlal Nehru's time New Delhi has attempted to maintain its strategic autonomy and indeed has had a close defence relationship with Russia, which continues to be India's largest arms supplier. Therefore, there is far less reason for the U.S. to take umbrage at India's decision to buy the S-400 air defence system.

However, the current American administration seems incapable of understanding these glaring differences between the two cases. In part this is the result of the fact that in 2017, the U.S. Congress passed CAATSA that makes it mandatory that the U.S. impose economic sanctions on countries engaging in significant business transactions with the Russian defence sector. India's purchase of the S-400 falls squarely within this definition.

The threat of CAATSA sanctions comes at a very inopportune time for India as it has been considering major multi-billion dollar arms acquisition deals with the U.S. The U.S. is also India's largest trading partner and is intimately engaged in India's civil nuclear programme. While there is a provision for waivers in the CAATSA legislation, these are not automatic and are tied principally to Russian behaviour and therefore almost impossible to implement.

The whole affair leaves India in a catch-22 situation. It cannot renege on the S-400 deal, which was signed on October 5, 2018, for deliveries to be made by April 2023, without alienating its largest and most reliable defence supplier. On the other hand, going ahead with the deal is likely to invite American economic sanctions and throw a wrench into India's developing strategic relationship with the U.S. On its part, the U.S. is caught in a bind because it cannot give a waiver to India while sanctioning its NATO ally Turkey for the same "crime".

The root of the problem lies in America's twin proclivities of acting unilaterally without regard to the interests of its international interlocutors and of enforcing provisions of pieces of its domestic legislation on foreign countries that have no say in the drafting of these laws and little recourse to appeals against them. It has done so in the case of sanctioning countries, including India and Turkey, importing Iranian oil regardless of their dependence on this source of supply or their traditional relations with Iran. Such unilateralism seems to have become an integral part of the current American administration's DNA.

Mohammed Ayoob is University Distinguished Professor Emeritus of International Relations, Michigan State University and Non-Resident Senior Fellow, Center for Global Policy, Washington DC

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.

Sheila Dikshit

In the passing of former Delhi Chief Minister Sheila Dikshit (Page 1, July 21), the political world has lost a leader who will be remembered for her stellar role as a politician and administrator. She showed India that the word 'politics' had greater meaning: of serving and supporting the common man in all ways possible. Her role as law maker shall always be remembered for the great contribution she made to the poor and the downtrodden. She gave life to Delhi by transforming it into a vibrant, well-developed city. Always affable, she was almost like a mother figure who was respected across the political spectrum. Sheila Dikshit will remain etched as one of India's tall leaders in the hall of Indian politics.

M. PRADYU,
Thalikavu, Kannur, Kerala

■ Ms. Dikshit will be specially remembered for her copybook planning and implementation of different development projects in Delhi. It would not be an exaggeration to say that she changed the face of Delhi in the truest sense. There are a lot of things to learn from her personality, style of administration and her interactions in public life. Her demise is an irreparable loss for Congress now undergoing a crisis.

MD. AZIM,
Sheohar, Bihar

■ The country has lost a stateswoman par excellence and a great role model for all women. She was grace, humility and sincerity all rolled into one. With her unassuming, direct and open approach, she transformed Delhi beyond recognition. Unassuming and always open to new ideas, she epitomised all the qualities of a true leader. Her enthusiasm and energy will be missed by all Delhiites. Ms. Dikshit was the epitome of what the Japanese define and worship – "quiet efficiency". Political leaders of all hues have a lot to learn from Mrs Dixit on what true and transformational leadership is all about.

G. VENKATARAMAN,
New Delhi

Ambassador on RSS

If the German Ambassador to India, Walter Lindner, has deduced from his interactions with RSS chief Mohan Bhagwat – as part of Mr. Lindner's attempt to comprehend the "Indian mosaic" – that the "RSS is a mass movement" it must be understandable given his make-up, background and compulsions (Page 1, July 21). The RSS is more than what he has described it to be. The significant question to ask is whether it is a benign or virulent organisation. The RSS's espousal of Hindutva or Hindu nationalism is what defines its core. Even though the RSS always harps on Mother India to instil patriotic feelings in the citizenry, it has difficulty in accepting that Mother India is essentially all the people of India.

G. DAVID MILTON,
Maruthancode, Tamil Nadu

■ The ideology of the RSS has gained ascendancy not so much because it has a magic wand to protect Mother India from all evils but more from the point that it has been associated with power uninterruptedly since 2014. In this context, the attempt being made across the country by vested interests to whitewash it and pass it off as a mass movement rooted in voluntary services and cultural nationalism must be seen for what it actually is. The RSS is anything but a movement for a united India where people professing all religions live in harmony.

ABDUL ASSIS P.A.,
Thrissur, Kerala

Temple visit

It has not been easy for hundreds of devotees visiting the Sri Devarajaswamy temple in Kancheepuram, Tamil Nadu for the Athi Varadar Vaibhavam. Earlier this month, my wife (62) and I (68) visited the temple. We feel there is urgent need for the authorities to set things right if a major disaster is to be averted. The heat is expected and as a medical practitioner I was able to avoid the risk of dehydration, but there are more serious issues that need looking into. There is much indecorous behaviour in form of jostling and pushing at every stage. Every point is seen by many as either an entry or an exit door. The result is that there is a grave risk of a stampede even in the "senior citizen queue". Like most aspects of life of India, there are no rules and timings for the VIPs. The metal barricades are impediments with many trying to find short cuts. The result is that almost everyone faces the risk of being shoved to the ground or crushed. At the end of it, we did not leave but were unceremoniously "ejected" by the crowd. We realise that considerable effort has gone into making the arrangements but the number of devotees is much more than what the system can handle. There need to be restrictions and more thought given to crowd management and dealing with senior citizens and the disabled.

DR. A. NANDAKUMAR,
Bengaluru

MORE LETTERS ONLINE:
www.hindu.com/opinion/letters/

Ignoring the proportionality principle

The High Court's verdict in the *Shakti Mills* rape case disregards several judicial standards & precedents

NINNI SUSAN THOMAS

GETTY IMAGES/ISTOCKPHOTO

The Bombay High Court last month handed down a judgment upholding the validity of Section 376E of the Indian Penal Code, which authorises the award of either a life sentence or the death penalty to perpetrators upon a second rape conviction.

The Section had been challenged by three of the accused in the *Shakti Mills* rape case, who had been sentenced to death by a trial court in 2014. Section 376E is among a slew of recent laws that have expanded the scope of death penalty to beyond cases of homicide, and primarily to incidents of rape. Its constitutionality has been challenged on multiple grounds, primarily due to disproportionality of the punishment.

The High Court's reasoning in upholding the law, however, is open to criticism. The constitutional standard that courts must apply when testing laws on the touchstone of Articles 14 (right to equality) and 21 (right to life) of the Constitution is that of "proportionality". In the context of criminal law and sentencing, proportionality asks whether a particular punishment strikes an adequate balance between the gravity of the crime, the interests of the victim and of society, and the purposes of criminal law. Further, the principle of proportionality calls for a striking down of laws that are excessively harsh or disproportionate.

Violation of rights

In 2015, the Supreme Court in the *Vikram Singh* case limited the application of the proportionality standard to situations where the punishment was "outrageously barbaric". Subsequent judgments of larger benches – such as in the *Modern Dental College* case and the *Aadhaar* case – have made it clear that where the question of rights violations is concerned, the proportionality test has to be more detailed, and has four prongs: first, there must be a legitimate state aim being pursued by the provision; second, there needs to be a rational nexus between the impugned provision and the aim; third, the impugned measure must be the least restrictive method of achieving the aim; and fourth, there must be a balance between the extent to which rights are infringed, and public benefit to be attained from the legislation. In particular, the third prong asks whether there exists an alternative method of achieving the same goal that does not infringe rights to the same degree.

In the *Shakti Mills* case, given the permanent and irrevocable nature of the death penalty, there arose a fundamental question. This pertained to whether the legislative objective, of increasing the punishment for a certain category of offences to demonstrate social abhorrence towards such offenders, and to create deterrence, could be adequately fulfilled by a sentence of life imprisonment. However, instead of addressing this issue, the Court relied entirely on the fact that the law had been passed with the intention of deterring rapes.

While it is true, in general, that in questions of criminal sentencing, there is a broad presumption in favour of the state, simply stopping at that is not adequate for a court. Proportionality by its very nature precludes a complete deference to the state when it comes to adjudicating on the violations of fundamental rights. However, the Court did not at any point scrutinise the reasons that would have potentially justified the state's decision to go for death penalty in the case of a non-homicidal crime. Had it applied the proportionality standard in this way, the outcome may have been different.

Another striking aspect of the judgment is the Court's discussion of the severe effect of rape on women and society. The court declaimed that rape is far worse than murder, and used that notion to hold that the death penalty was proportionate.

A regressive paradigm

Such reasoning is steeped in regressive stereotypes of shame and stigma. This represents vestiges of the notion that a woman is a man's property, as argued by American jurist Ruth Bader Ginsburg in her *amicus* brief before the U.S. Supreme Court in *Coker v. Georgia* case (1977).

The Justice Verma Committee, which was set up to suggest amendments to criminal law after the Delhi gang-rape incident, specifically argued that the state and civil society need to deconstruct and change the 'shame-honour paradigm' with relation to rapes, and treat them as an offence against the body. It is troubling that the Bombay High Court conceded to this regressive paradigm.

While non-homicidal crimes might be devastating in the harm that they cause, they cannot, as stated by the U.S. Supreme Court in the *Kennedy v. Louisiana* case (2008), compare to murder in their "severity and irrevocability". The petitioner in the *Shakti Mills* case had also relied on judgments of the United States Supreme Court such as *Coker v. Georgia* and *Kennedy v. Louisiana*, in which provisions that stipulated death penalty for non-homicidal offences were struck down. However, the Bombay High Court refused to even engage with the arguments on the basis that "the U.S. Courts treat crimes of rape as crimes against individuals, unlike Indian law, which treats an offence of rape not only as a crime against the victim but, as a crime against the entire society."

The Court, however, provided no source for this odd claim. It is in the very nature of 'criminalising' an offence, instead of treating it as a civil wrong, that the act is deemed to be an offence against society, whether in India, or in the U.S.

Ignoring the American parallels

The American judgments specifically dealt with intricate issues, such as proportionality and harm principle, and the manner in which a court must probe the aims and objectives achieved by such a provision. It would have been a beneficial exercise for the Bombay High Court to deal with those arguments.

As courts around the world, including the Indian Supreme Court, have recognised, death penalty is a form of punishment qualitatively different from any other. It is permanent and irrevocable, rules out any possibility of correcting an error if found later, and denies the possibility of reform and rehabilitation. It is for this reason that the Supreme Court has repeated many times that the death penalty must only be imposed in the "rarest of rare" cases, and this is also why the recent proliferation of statutes expanding the scope of the death penalty, often as knee-jerk responses to public outrage, is a cause for concern.

In this situation, it is of utmost importance for courts to scrutinise such laws carefully, and on the touchstone of constitutional standards. In this regard, the Bombay High Court's judgment falls short. It engages in excessive deference to the 'will' of the state and does not enter into any judicial analysis of whether the death penalty in these circumstances was at all justified under the doctrine of proportionality, and whether any other lesser form of punishment would have sufficed. The judgment also repeats gendered stereotypes about the nature of rape to substantiate the Court's conclusions, and dismisses, without engagement, insights from other courts grappling with similar issues.

Ninni Susan Thomas is with Project 39A at National Law University, Delhi. Views expressed are personal

FROM THE READERS' EDITOR

Pride and melancholy

To save the hard-won press freedoms, there is a need to form a vibrant covenant between journalism and citizens

A.S. PANNEERSELVAN

Commemorative columns can be an occasion to celebrate a body of work. They have a tone of pride and professional satisfaction. But, I reside in a borderless terrain between personal satisfaction and a profound sense of melancholy as I write this 350th column.

As the Readers' Editor of *The Hindu*, the seven-year long journey has been gratifying and the constant engagement with the readers, which included periodic 'open houses', was not only rewarding but also stimulating. But, the fortune of the news media industry is a cause for concern for any one who cherishes democracy.

The threat comes from multiple nodes: governmental manipulation; digital disruption; the greed of the Silicon Valley platforms; falling advertising revenues; paywalls not generating adequate resources to fund quality journalism; the dual menace of disinformation and misinformation; and finally, the growing news avoidance among the citizens.

With the threat for independent journalism coming from not just authoritarian countries but also from democratic regimes, early this month, Canada and the U.K. jointly hosted a global conference on media freedom in London. Amal Clooney, the human rights lawyer who defended the two Reuters journalists detained in Myanmar for their reportage on the Rohingya crisis and who is defending the Philippines journalist Maria Ressa in her legal battle with President Rodrigo Duterte, made a forceful presentation.

Ms. Clooney said that only one in 10 people in the world live in a country with a free press and that share will shrink further unless democracies protect the freedom of their own media with deeds as well as words and stand up to abuses elsewhere. In her reflections about the conference, Roula Khalaf, Deputy Editor at the *Financial Times*, said we either need to fight for press freedom or watch it wither away.

A trailblazing magazine

There are many articles to mark the 50th anniversaries of man's landing on the moon and the redefining act of bank nationalisation in India. However, very few are aware of the fact that, if it had been permitted to survive for another five months, *Herald*, a magazine published from Karachi and one of the finest magazines of South Asia, would have observed its 50th anniversary this year. This trailblazing magazine was shut down this month. In my three-and-a-half decades of experience in journalism, I have been a magazine journalist for two decades and it is disturbing to see the crisis that is engulfing magazine journalism.

My predecessor at Panos South Asia and one of the editors of the *Dawn* group of publications, Saneeya Hussain, introduced *Herald* and its journalism to me. It was she who pointed out how, in a sense, *Herald* exemplified Tom Wolfe's 1972 canon of "new journalism". Wolfe had written: "The kind of reporting we were doing struck us as far more ambitious, too. It was more intense, more detailed, and certainly more time-consuming than anything that newspaper or magazine reporters, including investigative reporters, were accustomed to... We had to gather all the material the conventional journalist was after – and then keep going. It seemed all-important to be there when dramatic scenes took place, to get the dialogue, the gestures, the facial expressions, the details of the environment. The idea was to give the full objective description, plus something that readers had always had to go to novels and short stories for: namely, the subjective or emotional life of the characters."

A voice of dissent

Azhar Abbas, a distinguished print and television journalist from Karachi, wrote a moving piece about the closure of *Herald* in *The News*. His obituary for *Herald* read: "*Herald* has been a voice of dissent for decades. Despite the pressure of daily newspaper coverage, the magazine kept itself relevant by doing investigative stories and detailed political analyses. As a young reporter in the 90s, working with accomplished journalists like Zaffar Abbas, Idrees Bakhtiar and Talat Aslam, it was at *Herald* that I learned why writing in public interest is more important than any other interest."

The searing editorial, 'Sword against pen' (July 18) in this newspaper brought out the challenges in India. It said: "In India, the Centre and several State governments have not merely shown extreme intolerance towards objective and critical reporting but also taken unprecedented measures to restrict journalism." There is a need to form a vibrant covenant between journalism and citizens to strengthen our democratic credentials and to save the hard-won freedoms.

readerseditor@thehindu.co.in

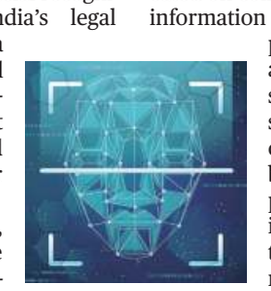
An invasive and inefficient tool

Use of facial recognition technology in law enforcement can have disastrous consequences

VIDUSHI MARDA

The Automated Facial Recognition System (AFRS) recently proposed by the Ministry of Home Affairs is geared towards modernising the police force, identifying criminals, and enhancing information sharing between police units across the country. The AFRS will use images from sources like CCTV cameras, newspapers, and raids to identify criminals against existing records in the Crime and Criminal Tracking Networks and System (CCTNS) database.

The Home Ministry has clarified that this will not violate privacy, as it will only track criminals and be accessed only by law enforcement. However, a closer look at facial recognition systems and India's legal framework reveals that a system like the AFRS will not only create a biometric map of our faces, but also track, classify, and possibly anticipate our every move.



Technically speaking, it is impossible for the AFRS to be truly used only to identify, track and verify criminals, despite the best of intentions. Recording, classifying and querying every individual is a prerequisite for the system to work.

Assumed guilty

The system will treat each person captured in images from CCTV cameras and other sources as a potential criminal, creating a map of her face, with measurements and biometrics, and match the features against the CCTNS database. This means that we are all treated as potential criminals when we walk past a CCTV camera – turning the assumption of "innocent until proven guilty" on its head.

It is assumed that facial recognition will introduce efficiency and speed in enforcing law and order. However, the evidence suggests otherwise. In August 2018, a facial recognition system used by the Delhi police was reported to have an accuracy rate of only 2%. This is a trend worldwide, with similar levels of accuracy reported in the U.K. and the U.S.

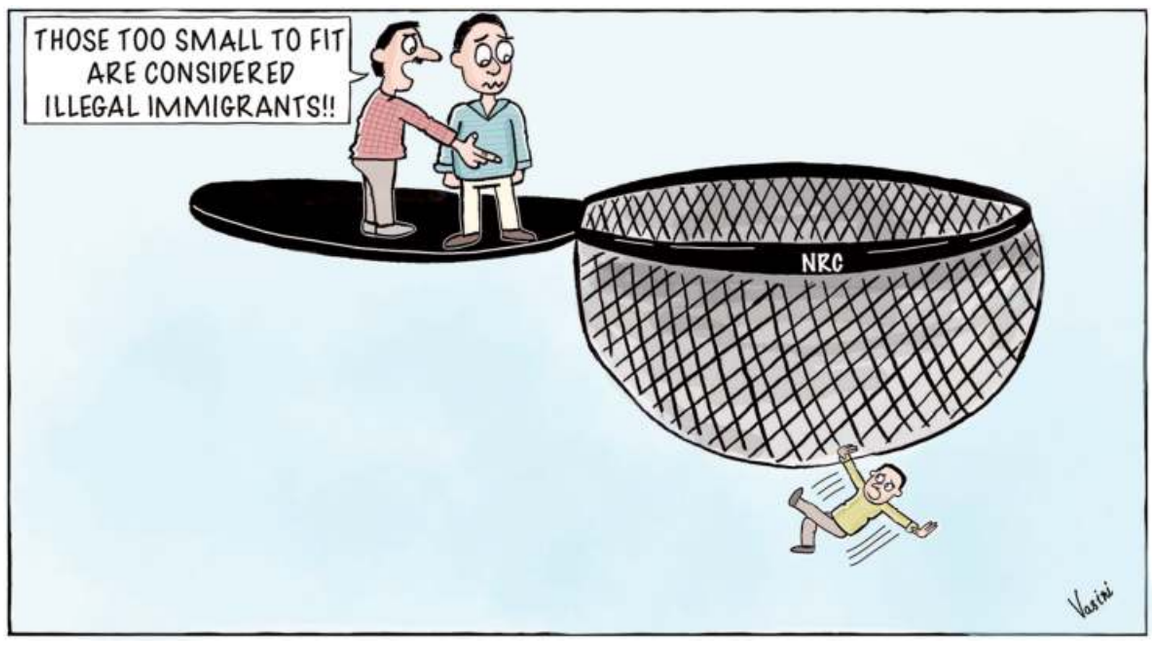
Accuracy rates of facial recognition algorithms are particularly low in the case of minorities, women and children, as demonstrated in multiple studies across the world. Use of such technology in a criminal justice system where vulnerable groups are over-represented makes them susceptible to being subjected to false positives (being wrongly identified as a criminal). Image recognition is an extremely difficult task, and makes significant errors even in laboratory settings. Deploying these systems in consequential sectors like law enforcement is ineffective at best, and disastrous at worst.

Fears of mass surveillance

Facial recognition makes data protection close to impossible as it is predicated on collecting publicly available information and analysing it to the point of intimacy. It can also potentially trigger a seamless system of mass surveillance, depending on how images are combined with other data points. The AFRS is being contemplated at a time when India does not have a data protection law. In the absence of safeguards, law enforcement agencies will have a high degree of discretion. This can lead to a mission creep. The Personal Data Protection Bill 2018 is yet to come into force, and even if it does, the exceptions contemplated for state agencies are extremely wide.

The notion that sophisticated technology means greater efficiency needs to be critically analysed. A deliberative approach will benefit Indian law enforcement, as police departments around the world are currently learning that the technology is not as useful in practice as it seems in theory. Police departments in London are under pressure to put a complete end to use of facial recognition systems following evidence of discrimination and inefficiency. San Francisco recently implemented a complete ban on police use of facial recognition. India would do well to learn from their mistakes.

Vidushi Marda is a lawyer and researcher at Article 19, a human rights organisation

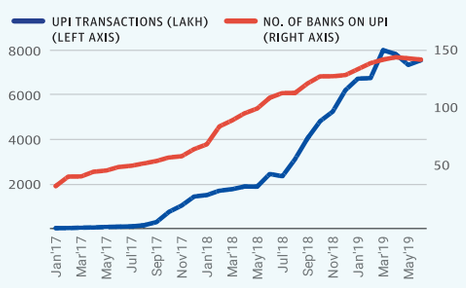


DATA POINT

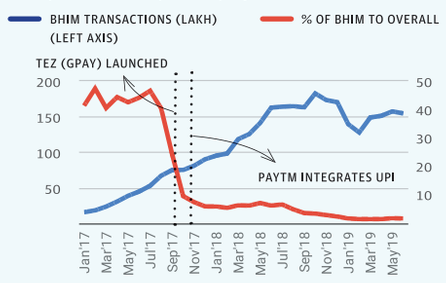
Crowded out by private players

The number of transactions done through the Unified Payment Interface (UPI) has increased by 180 times since its inception in December 2016. However, private players have cut into the government-backed Bharat Interface for Money (BHIM) app's share of the transactions, while card-based transactions are still the most preferred online payment method. By **Varun B. Krishnan**

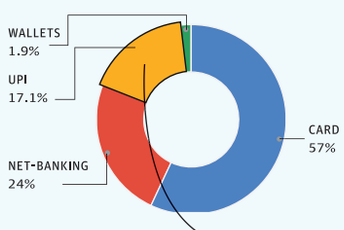
1 Healthy growth
The number of transactions through UPI rose from 41.5 lakh in Jan. 2017 to 7,545.4 lakh in June 2019. The number of banks on the interface also saw a significant growth



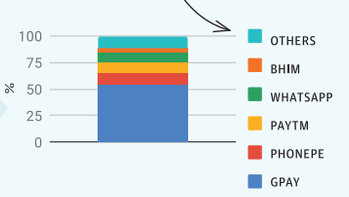
2 BHIM falls behind
From 41% in Jan. 2017, BHIM's share of transactions in overall UPI has fallen to just over 2% in June 2019. Competition from private players has led to this



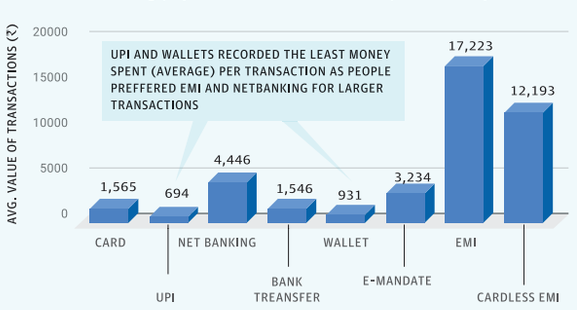
3 Cards ace the pack
Three out of every five online transactions were carried out with either debit or credit cards, while 24% were done through net banking in FY19. UPI accounted for about 17%



In FY19, 54% of the UPI transactions were carried out using GPAY app while BHIM constituted only 4.1%. Graph shows the share of UPI transactions carried out in FY19



4 Smaller transactions
Though the usage of UPI is picking up, the interface is mostly used for transactions of lesser value. Graph shows average money spent per transaction among payment modes between April and May 2019



The Hindu.

FROM THE ARCHIVES

FIFTY YEARS AGO JULY 22, 1969

2 men leave footprints on moon

Two men walked on the moon to-day [July 21]. They were U.S. astronauts, Neil Armstrong (38) and Edwin Aldrin (39), the first men to leave their footprints on the dusty, rocky surface of the moon where they landed in the Lunar Module Eagle at 1-47 a.m. (I.S.T.) to-day [July 21]. After completing the tasks set for them, the astronauts again took off successfully to rejoin the command ship. Armstrong set foot on the moon first at 8-27 I.S.T. and Aldrin joined him 19 minutes later. Millions of people all over the world, quarter of a million miles away watched them on television as they walked slowly and warily at first and as they gained confidence, jumping, bouncing and Kangaroo-hopping gaily in front of their landing craft taking advantage of reduced gravity. They stayed in the open for two and half hours carrying out meticulously all the tasks assigned to them and then returned to the Eagle. Armstrong stepped out of the lunar module, Eagle and put his left foot down on the moon with the words "this is one small step tor man, but one giant leap for mankind." The sun was then just rising over the lunar horizon where the days and nights are 14 days long and temperatures range from a scorching 250 degrees centigrade above to a frigid 280 degrees below zero.

A HUNDRED YEARS AGO JULY 22, 1919.

Death of Dr. T.M. Nair.

(From an editorial)

The news of the death of Dr. T.M. Nair wired by Reuter will be received with profound regret in this Presidency and elsewhere. Dr. Nair was a fluent and eloquent speaker, an acute debater, a bold and courageous politician, a vigorous writer, and an eminent medical man and his loss deprives Madras of a striking personality who for nearly quarter of a century took a prominent part in the civic and public life in the city. A cable to our morning contemporary says that Dr. Nair breathed his last on Thursday morning last, as a result of complications brought on by diabetes, Bright's disease, gangrene of the leg and heart failure. Dr. Nair was nearly 50 years of age at the time of his death. He proceeded to Edinburgh from the Madras Presidency College, where he passed the Medical Examination in 1894 and at Brighton and Paris he obtained valuable experience in ear and throat diseases. While at Edinburgh he took an active part in various college activities and acquired that mastery of English which gained for him distinction as a faultless speaker of that language in after life.