



A wrong way to end

The special status of J&K was never meant to be permanent, but it should not have been scrapped without wider consultations

Jammu and Kashmir has been a theatre of muscular Hindutva nationalism, in the early decades in script and since 2014 in performance. Adopting a highly militarist approach to separatism, and shunning political process entirely since 2014, the BJP has now delivered on a promise it has long made, by abrogating the special status that Jammu and Kashmir had enjoyed in the Constitution through a combination of executive and parliamentary measures. Additionally, the State is being downgraded and divided into two Union Territories. The mechanism that the government used to railroad its rigid ideological position on Jammu and Kashmir through the Rajya Sabha was both hasty and stealthy. This move will strain India's social fabric not only in its impact on Jammu and Kashmir but also in the portents it holds for federalism, parliamentary democracy and diversity. The BJP-led government has undermined parliamentary authority in multiple ways since 2014, but the passing of legislation as far-reaching as dismembering a State without prior consultations has set a new low. The founding fathers of the Republic favoured a strong Centre, but they were also prudent in seeking the route of persuasion and accommodation towards linguistic and religious minorities in the interest of national integration. The centralising tendencies increased in the following decades, but Hindu nationalists always argued for stronger unitary provisions and viewed all particular aspirations with suspicion. For them, Jammu and Kashmir's special constitutional status was an impediment, not an instrument, for the region's integration with the rest of the country.

The entire exercise of getting Article 370 of the Constitution effectively abrogated has been marked by executive excess. The first step was to declare by a presidential decree that the 'Governor' – without regard to the fact that he has no Council of Ministers now to aid and advise him – can speak for the State government and give his concurrence to any modification in the way the Constitution of India applies to Jammu and Kashmir. Second, on the basis of this 'concurrence', the latest Presidential Order scraps the previous one of 1954, abrogating the separate Constitution of Jammu and Kashmir. Third, the fact that the State is under President's Rule has been used to usher in a new dispensation under which Jammu and Kashmir becomes a Union Territory with a legislature and Ladakh another such territory without a legislature. In sum, a purported process to change the constitutional status of a sensitive border State has been achieved without any legislative input or representative contribution from its people. The bifurcation of States in the past cannot be cited as a binding precedent as, under Article 3 of the Constitution, the President seeks the views of the legislature of the States concerned, even if concurrence is not mandatory. In the present scenario, J&K has been represented by an unelected Governor appointed by the Centre, while Parliament has ventured to ratify the conversion of a State into two Union Territories without any recommendation from the State.

If there is a legal challenge to these measures, it would centre around whether such far-reaching steps could be achieved in the absence of a representative government by assuming that its gubernatorial administrator is constitutionally capable of using his consent as that of the entire State. Further, there is a self-enabling aspect to the Presidential Order. It performs a hop-step-and-jump feat. It hops over the requirement of the State government's consent by declaring that the Governor is the State government. It steps over the need for aid and advice by the ministerial council by saying the Governor's opinion is enough. And it jumps over the fact that there is no constituent assembly now by merely reading the term as 'legislative assembly', and letting Parliament perform the role of the State legislature. Thus the President's power under Article 370 has been used both to create an enabling provision and to exercise it immediately to modify the Order, thereby dispensing with the role envisaged for the State Assembly. While it is true that in 1961 the Supreme Court upheld the President's power to 'modify' the constitutional provisions in applying them to J&K, it is a moot question whether this can be invoked to make such a radical change: a functioning State has now been downgraded and bifurcated into two Union Territories. It is inconceivable that any State legislature would ever have recommended its own demotion in status.

True, the special status of J&K was meant to end, but only with the concurrence of its people. The Centre's abrupt move disenfranchised them on a matter that directly affected their life and sentiments. Moreover, that this was done after a massive military build-up and the house arrest of senior political leaders, and the communications shutdown reveals a cynical disregard of democratic norms. It appears that the current government values J&K for its demonstrative impact before the rest of the country, as a place where a strong nation and its strong leader show uncompromising political will. But that may have other unintended consequences. Geographically and metaphorically, Jammu and Kashmir is the crown of secular India – a Muslim majority region in a Hindu majority country. Its people and leaders had chosen secular India over Islamic Pakistan, a fact that Islamists never reconciled with. The BJP's adventurous route also has as backdrop an impending U.S. withdrawal from Afghanistan that will trigger an unforeseeable churn in Islamist politics in the region. Islamists have always viewed Kashmir as a component of their global grievances. Whatever its intent in enabling the full integration of Jammu and Kashmir with India, Monday's decision to alter the State's status could have unintended and dangerous consequences.

Piecing together Kashmir's audacious road map

The new doctrine will have to persuade Jammu and Kashmir that greater integration with India holds promise



AMITABH MATTOO

In 1948, the tallest leader of Jammu and Kashmir, Sheikh Abdullah, greeted Prime Minister Jawaharlal Nehru at Lal Chowk, Srinagar, with a couplet from the Sufi poet, Amir Khusro: "Mun tu shudam tu mun shudi, mun tun shudam tu jaan shudi; Taakas na guyad baad azeen, mun deegaram tu deegari (I have become you, and you me, I am the body, you soul; So that no one can say hereafter, that you are someone, and me someone else)". Five years later, Abdullah was dismissed from office and interned on the instructions of Nehru. Since then the body of Kashmir and the soul of the rest of the country have cohabited restlessly.

On Monday, August 5, 2019, the Narendra Modi government made arguably the most audacious decision of its tenure and probably the boldest decision made by any government on Kashmir since Indira Gandhi arrived at a *modus vivendi* with Sheikh Abdullah in 1975. By moving to revoke the 'special status' granted to the State under Article 370, and by reorganising the State into two Union Territories – Jammu and Kashmir and Ladakh – it demonstrated unprecedented chutzpah, but it may have unleashed a chain of events difficult to predict or contain. For one, while even the founding fathers recognised that Article 370 was a transitional or temporary provision, there was a clear subtext; that its revocation would only happen once the acquiescence of the people of the State was obtained.

There is no doubt that the move will be legally challenged on grounds of procedural infirmities and, more substantively, that it un-

dermines the basic feature of the compact between Delhi and Srinagar that was agreed upon in 1947. But beyond the legality, the real test will be on the streets of Srinagar, Jammu and Delhi once the security cordon is lifted from the State. What was unbecoming is the unwillingness to enter into consultation with the mainstream political leaders; in no other State would former Chief Ministers have been dealt with so cavalierly. Similarly, the impression that the move on Article 35A is designed to engineer demographic change rather than to protect the rights of women and other marginal groups of the State, will need to be corrected.

A mirror to geopolitics

The move is clearly embedded in the larger geopolitics of the region and the manner in which regional alliances are marginalising Indian interests in the heartland of the region. With the United States seeking a quick exit from, and willing to let the Inter-Services Intelligence-sponsored Taliban to control Afghanistan (and China deeply embedded in the power play), the heartland of central Asia has rarely been as adverse to Indian interests since 1989, when the Soviet Union withdrew from Afghanistan. Kashmir could, in these circumstances, become even more vulnerable to external elements than it was in the 1990s.

On top of it, the new camaraderie between U.S. President Donald Trump and Pakistan Prime Minister Imran Khan and the repeated 'offer' by Mr. Trump to meditate in Kashmir may have precipitated the decision, which would, however, have in any case taken months of preparation. A decision to cancel the Amarnath yatra and take hard decisions, with both domestic and international ramifications, suggests that the government believed that a settlement in Jammu and Kashmir and its 'pacification' was vital for India's national secur-



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ity. This was, of course, a marked departure from recent history.

The Gupkar model

Internally, for nearly 70 years, New Delhi managed Jammu and Kashmir (or more precisely the Kashmir Valley) through Srinagar's Gupkar Road. Gupkar Road became a metaphor for the Centre's approach, historically, towards Kashmir. New Delhi's follies and its firmness; its cleverness and its calculations; its vacillating largesse and its ubiquitous Leviathan-like presence, were part of Gupkar's landscape and legacy. Gupkar Road is the meandering gateway to the vistas of the Dal Lake, which runs from the desolate offices of the United Nations Military Observer Group in India and Pakistan at Sonwar to the fading charms of erstwhile royal palaces on the banks of the lake. It is here that security agencies are nestled in close comfort with the political and business elite, and where interrogation centres have morphed into "haunted" guest houses.

As a model, Gupkar Road reflected itself in a series of policies that had become predictable; a network of patronage and power that had been gamed by friends and adversaries alike. It sustained a politics of entitlement; it politicised or newspaper editors or bureaucrats who were kept in good humour on the basis of some chimera-like national interest. The

Gupkar model, it was obvious, had become redundant and counter-productive and had incentivised bad politics and the attendant rent seeking and other despicable forms of corruption.

Now, shorn of its ideological fervour, what is seemingly being put in place is a new audacious plan beyond the constitutional interventions. As a start, the Modi plan is fundamentally about directly reaching out to the people without the mediation of either separatist groups or mainstream politicians.

Grass-root reach

Reaching out to the people is seen as being best done by empowering local democracy to its fullest. In the past, the devolution of powers to the panchayats and urban local bodies carried little popular appeal with elected members of the Legislative Assembly, who saw this as directly eroding their authority and had a vested interest in centralising power. One of the key factors, it may be recalled, behind the Centre's disconnection with the Mehbooba Mufti government was its continued unwillingness to hold elections to local bodies.

Since the imposition of Governor's (and now President's) Rule, the State Administrative Council has acted with remarkable alacrity to devolve powers to panchayati raj institutions in the State. Implementation of important schemes such as the Mahatma Gandhi National Rural Employment Guarantee Act, the Pradhan Mantri Awas Yojana, the Mid-Day Meal scheme, Integrated Child Development Services and social forestry projects has been devolved to the panchayats.

The monitoring and supervision of schools and health institutions has also been passed on to the panchayati raj institutions. In addition, panchayats shall also be conducting a quarterly social audit of works and programmes in their area.

Almost in parallel is the Savona-

rola-like campaign against corruption where no one – powerful or influential – is 'untouchable' or beyond the scope of investigation by law enforcement agencies, but directed at the power elite of the State.

Graft crackdown

Corruption is thus being addressed not just at the fringes; but the very core of a rotten system is now being targeted where a few families are seen to have usurped power and economic benefits – not just in Kashmir but in Jammu as well. Indeed, almost every popular survey in Jammu and Kashmir reveals that one of the leading causes of youth angst and alienation was nepotism and corruption among the ruling elite.

This anti-corruption drive is accompanied by attempts to fast track development to create institutions of academic and extra-curricular excellence and to generate skilled employment in a manner that the youth are gainfully employed and weaned away from radical thought. This, of course, is easier said than done.

In the interim, the new doctrine will have to persuade the majority of the people of Jammu and Kashmir that greater integration with India will provide them with more opportunities, provide more freedom and space, and strengthen their rights much more than the alternatives proposed by other mainstream parties or separatists.

Will the Modi plan lead to greater harmony between New Delhi and Srinagar, bringing enduring peace to the body and the soul? If it does, it will have performed an extraordinary national service and resolved one of New Delhi's greatest challenges. For the moment, however, we have to live with the uncertainty that is germane to all high-risk, almost adventurous undertakings.

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An integration without integrity

More than forced homogenisation with India, Kashmir needs a moral disposition towards truth and honesty



RAJGOPAL SAIKUMAR

Yesterday the Ministry of Law and Justice issued a notification titled The Constitution (Application To Jammu And Kashmir) Order, 2019 overriding the Order of 1954, and in effect scrapping Article 370 of the Constitution. Nowhere in the world of constitutional-democracies can one see an executive government passing orders to amend the Constitution. This order lacks legality as well as moral legitimacy. I concur with the President of the Jammu & Kashmir Peoples Democratic Party (PDP), Mehbooba Mufti's claim that the government's decision is illegal, based on insincere politics and constitutional abuse.

Let us backtrack to the political moves that have led to yesterday's notification: On June 20, 2018, under Article 92 of the Constitution of J&K, the State was placed under Governor's Rule after the Bharatiya Janata Party (BJP) withdrew support to its alliance partnership with the PDP. Six months later, in December 2018, Governor's Rule got converted into President's Rule (Article 356 of the Indian Constitution).

Let us be clear about the implications of these tactical manoeuvres of carefully transferring power from a democratically

elected Assembly, to Governor's Rule and then President's Rule. It implies that all the powers of the Government of the State are now vested in the Governor under the superintendence of Prime Minister Narendra Modi. Given these conditions of severe democratic deficit, the government wrote up an order scrapping Article 370, sent it to itself for "concurrence", and had it signed by the President.

On concurrence

Let us then turn to Article 370(3) which lays down the procedure to amend or repeal Article 370. It states that the President may by notification declare that the article shall cease to be operative provided that it is confirmed by the Constituent Assembly of the State before the President issues such notification. It says that only with the prior consent of the Constituent Assembly of J&K the presidential order will be valid. But the Constituent Assembly framed the Constitution of J&K and got dissolved. How then must we interpret Article 370(3) if the literal interpretation is not useful? By reading it in terms of its legislative history.

N. Gopalaswami Ayyangar who introduced the provision in the Constituent Assembly of India on October 17, 1949 states: "We have also agreed that the will of the people through the instrument of the Constituent Assembly will determine the Constitution of the State as well as the sphere of Union jurisdiction over the State...the President may, on the recommenda-



tion of that Constituent Assembly, issue an Order that this Article [370] shall either cease to be operative, or shall be operative only subject to such exceptions and modifications as may be specified by him. But before he issued any order of that kind, the recommendation of that Constituent Assembly will be a condition precedent."

A selective reading

To make a complicated legal history short, there was an acknowledgment that the Constituent Assembly, as a representative of the people of J&K, had to give concurrence before a Presidential Order is passed. But how does the Home Minister Amit Shah read Article 370(3)? He has read down the words "Constituent Assembly" to mean "Legislative Assembly of the State"; having cleverly dissolved the Assembly and usurped its power, in effect it is the government that is giving solipsistic concurrence to itself. Such self-indulgent narcissism has led to short-circuiting the entire process in letter and spirit.

The reason the Notification lacks moral legitimacy is because

of the way BJP has read down "Constituent Assembly" to include even 'President's Rule'. More jurisprudentially, one needs to ask this: what is 'Constituent Assembly'? It is a body of representatives who are the embodiment of the 'constituent power' that is needed to constitute a nation-state into existence. So, at the core of constituent power is democratic consent. India derives its legitimacy from its Constitution, and the Indian Constitution in turn is legitimate because it is supported by a constituent power in the form of democratic consent. Where in Mr. Shah's interpretation of the words "Constituent Assembly" is there even an iota of acknowledgment of a constituent power?

Article 370(2) clearly mentions that the concurrence of the State Government needed to be taken only before the Constituent Assembly was convened. There is no mention that the State Legislative Assembly will have these powers after the dissolution of the Constituent Assembly. To read it so is absurd. The Constituent Assembly as the embodiment of constituent power is what creates and authorises, gives birth and grants the power to the legislative assembly. There is no equivalence between a Constituent Assembly and Legislative Assembly. If at all the words "constituent assembly" in Article 370(3) have to be read down, it has to be done in such a way that its core meaning is saved. For example, it can be read down as meaning a 'special majority' of the State Legislative Assembly constituted

by free and fair elections.

The fact of the matter is that given the democratic deficit, the BJP knows well that legal manipulations are not enough to scrap Article 370. What it needs is the use of force, which is what it has been surreptitiously preparing for over weeks and months. The government has given Kashmiris two options: either assimilate into the mainstream, where mainstream is a code for Hindi, Hindu, Hindustan, or be banished, and evicted by force. That is the tragic state of affairs we have come down to in the name of national unity and integrity.

Salman Rushdie parodies the word 'integrity' in *Shalimar The Clown*: "The key to understanding this position was the word 'integral' and its associated concepts... the Indian effort was to preserve the integrity of the nation. Integrity was a quality to be honoured and an attack on the integrity of the nation was an attack on its honour and was not to be tolerated... Kashmir was an integral part of India. An integer was a whole and India was an integer and fractions were illegal. Fractions caused fractures in the integer and were thus not integral... When truth and integrity conflicted it was integrity that was to be given precedence." Mr. Shah conflates 'integrity' with 'integration'. Integration may involve forced homogenisation but integrity is moral disposition towards truth and honesty.

Rajgopal Saikumar is a doctoral candidate at New York University

LETTERS TO THE EDITOR

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An Article of faith

With a parliamentary majority on its side, the Bharatiya Janata Party (BJP) has implemented a key item on the core agenda of its parent organisation Rashtriya Swayamsevak Sangh (RSS) – abrogation of Article 370. The Muslim-majority State's accession to India was premised on its special status. Hence, it is a valid apprehension that the BJP government's unilateral move, done without consulting the stakeholders in the State, may weaken, if not break, the bond between Kashmir and the rest of India and also alter the State's present

demographic profile. The saddest part is that the Central government has given the impression that the Valley's people are less important than its territory.

G. DAVID MILTON,
Maruthancode, Tamil Nadu

■ Any changes to Article 370 require the assent of the State's 'Constituent Assembly'. The Centre may not agree with this provision, but the arrangement made between the then government and the people of Kashmir ought to have been respected and upheld. With one blow, the government has taken the relationship between the

Union and the people of Kashmir to a historic low. It is true that successive governments at the Centre diluted Article 370 to such an extent that it ceased to have any practical meaning. But still, it was that thin string which held Kashmir within the Union of India. The government has behaved like an occupying force imposing its will on a defensive population. One would be a fool to think that the move will not fan further extremist violence. And the way in which this was done, using the iron fist of the state, is a harbinger of times to come.

BIPIN THAIVALAPPI,
Payyannur, Kerala

■ This move will make all provisions of the Indian Constitution applicable to Jammu & Kashmir. Further, there will be no separate laws for the State. Indian citizens from outside will be able to own land and property in Kashmir. There will be elections once every five years and Central laws will directly apply. People in Kashmir need to realise that their State will have a bright future following the closer integration. However, one wishes that the Centre had obtained the assent of Kashmiris prior to taking such a radical decision.

RIFA DEKA,
Guwahati, Assam

Drug safety

The review of the book *Bottle of Lies* highlights the laxity of drug regulatory authorities in India (Sunday Magazine, August 4). The U.S.'s Food and Drug Administration (FDA) and other Western regulatory agencies ensure that their citizens receive quality drugs. We do not see a similar concern for Indian consumers coming from our national and State drug control authorities. According to reports, over the course of 2015, nearly a third of the warning letters issued by the FDA's Center for Drug Evaluation and Research were tied to

violations of safe manufacturing practices in India-based facilities. What intrigues the Indian consumer is: what happens to the millions of formulations that are recalled? India has earned distinction as a supplier of generic drugs and is known as the pharmacy of the world. This goodwill and reputation will be seriously compromised if the pharmaceutical industry fails to restore confidence of drug authorities in other countries and of the Indian consumer.

H.N. RAMAKRISHNA,
Bengaluru

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Clouds of uncertainty over Afghanistan

There can be no peace unless the Taliban and Afghan security forces de-escalate



RAKESH SOOD

After Pakistan Prime Minister Imran Khan's 'successful' visit to Washington last month, another round of Doha talks between the U.S. and the Taliban has started. U.S. Special Representative for Afghanistan Reconciliation Zalmay Khalilzad was in a hurry to go to Doha via Islamabad to ensure that Pakistan will deliver. On July 31 he tweeted, "In Doha, if the Taliban do their part, we will do ours, and conclude the agreement we have been working on".



"The Afghan government has lost credibility." A suicide attack on Amrullah Saleh, the candidate for vice president, at his party office in Kabul marked the beginning of the campaigning period in Kabul. ■ NVT

U.S. policy reversal

U.S. President Donald Trump has reversed his Afghanistan policy over the past two years. The 2017 policy aimed at breaking the military stalemate in Afghanistan by authorising an additional 4,000 soldiers, giving U.S. forces a freer hand to go after the Taliban, putting Pakistan on notice, and strengthening Afghan capabilities. Within a year, it became clear that the policy was not working. The U.S. failed to understand that no insurgency can be defeated as long as it enjoys sanctuary. Direct talks with the Taliban began with the appointment of Mr. Khalilzad. But soon, the U.S. realised that it needed the Pakistan army's help to get the Taliban to the negotiating table. A politically savvy Khalilzad understood that his negotiating time frame was governed by President Trump's re-election due in 2020; therefore any deal had to be concluded before the end of 2019. This reality wasn't lost on either the Taliban or the Pakistan army; time was on their side.

While the U.S. maintained that the seventh round of Doha talks would cover four issues – a cessation of hostilities; an intra-Afghan peace dialogue; assurance from the Taliban that Afghan territory would not be used for attacking U.S. interests; and U.S. troop withdrawal – the Taliban made it clear that its priority was the last issue. It rejected a ceasefire, instead launching its spring offensive, Operation Fath, as well as talks with the Afghan government, describing it as a "puppet regime". The Taliban

provided some assurances on the third issue but kept demanding a firm date for U.S. troop withdrawal.

The Taliban relented on the second issue, an intra-Afghan peace dialogue, when pushed by Pakistan. In early July, it met with an Afghan delegation, which included some officials who were present in their personal capacity.

The quid pro quo for Pakistan for delivering on this soon emerged in Mr. Khan's meeting with Mr. Trump on July 22. On January 1, 2018, Mr. Trump had accused Pakistan of "lies and deceit". He tweeted that while the U.S. had given Pakistan "\$33 billion in aid", Pakistan was providing a "safe haven to terrorists". He conveyed his displeasure by cutting off \$1.3 billion of assistance. Nearly 18 months later, with Mr. Khan standing beside him, Mr. Trump told the world that "Pakistan is going to help us out to extricate ourselves".

Mr. Khan cleverly tickled Mr. Trump's ego by suggesting that as the leader of the "most powerful country in the world", he could "play an important role in bringing peace in the subcontinent". Mr. Trump lapped it up and offered his mediation skills to help resolve the Kashmir problem, adding that Prime Minister Narendra Modi had himself suggested it during their exchange in Osaka, a claim that was promptly rejected by the Indian authorities. As a downpayment for the next round of Doha talks, the U.S. also cleared a \$125 million support package for Pakistan's F-16 fleet.

Meanwhile, elections in Afghanis-

tan have been postponed twice and will now be held on September 28 to give time for the Doha talks. The Afghan government has lost credibility and there is little support for its term being extended. A deteriorating security environment makes it difficult for a credible election to be held. Afghan security forces are losing 25 to 30 men daily, a toll that is depleting ranks and dampening morale.

Campaigning kicked off on July 28 and was marked by a suicide attack on Amrullah Saleh, the candidate for vice president as Ashraf Ghani's running mate, at his party office in Kabul. Mr. Saleh had a narrow escape but the suicide attack claimed over 20 lives. Mr. Saleh has been among the most vocal critics of the hasty reconciliation process and the U.S.'s gullibility at reposing faith in the Pakistan army. A close aide to the former Northern Alliance leader Ahmad Shah Massoud, Mr. Saleh has long been targeted by the Taliban.

The Taliban is not going to take part in the election, and once a deal is concluded, its demand will be for an interim government. Even if elections take place, an elected government would soon find itself at cross purposes with the interim government. Further, a number of promised electoral reforms are yet to be implemented.

An interim government would prepare the ground for fresh elections after constitutional amendments and electoral reforms that would be decided by the traditional Loya Jirga process over two years.

However, this approach is strongly opposed by the more secular and liberal Afghan groups, including women, who see it as a step back from the democratic rights and principles enshrined in the 2004 Constitution. There is a deepening sense of unease and betrayal in the Afghan government which feels that its legitimacy is being eroded by the U.S. tacitly making deals and leaving it in the lurch.

U.S. Secretary of State Mike Pompeo has already indicated September 1 as a deadline for concluding the Doha process. Instead of a messy and contentious election, an interim government would provide a better environment for the U.S. to manage its exit in keeping with the 2020 election calendar.

Continuing uncertainties

The reality is that there can be no peace unless the Taliban and Afghan security forces de-escalate, and this will require talks between the Taliban and the government. The Taliban wants to bypass this by entering government through the back door, using the interim structure. Such a move is likely to create strains within the Afghan security force which needs a clear chain of command to function. There is a rise in ethnic polarisation in Afghanistan. With the emergence of the Islamic State, there is growing evidence of sectarian polarisation. Any dilution of the cohesiveness of the Afghan security forces, which are dependent on external funding (primarily the U.S.), would dramatically increase the risks of fragmentation of Afghanistan.

All Afghans are tired of conflict, want peace, and accept that this requires reconciliation. But not all Afghans want peace on the terms of reconciliation dictated by the Taliban. Today 74% of the Afghan population is below 30 years and has lived for most part in a conservative but open society. That is why there is no national consensus on reconciliation. In the absence of a national consensus, external actors are able to intervene to support their own favourites. But that is not Mr. Trump's problem. The U.S.'s exit will end its long war in Afghanistan but growing political uncertainties will only exacerbate Afghanistan's ongoing conflict.

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The importance of finding funding

Investors should not be punished based on one-off events



GOPAL SRINIVASAN

Last week saw an outpouring of grief nationwide over the tragic decision made by an Indian entrepreneur to end his life. V.G. Siddhartha of Café Coffee Day had built a pioneering consumer business and acquired one of the largest retail footprints in the food and beverage space in India, attracting marquee investors. His story is a stark reminder that entrepreneurship is a journey of highs and lows, which doesn't just require capability and risk appetite on the part of the promoter but also demands great resilience.

Along with commiserations, the incident has also attracted some sweeping criticism – uninformed and unjustified – of the business practices of the private equity and venture capital industry. The truth is that the risk capital supplied by venture capital investors has been invaluable to entrepreneurship in India, where promoter funding by banks is frowned upon and founders are forced to rely on family and friends or take recourse to high-cost informal debt.

Spigot remained open in tough times

In the past decade, the ₹14 lakh crore of capital supplied by private equity and venture capital funds has played a pivotal role in birthing and scaling up over 4,000 Indian ventures. In addition to creating millions of jobs, firms funded by these investors pay more taxes, are better governed and make efficient use of scarce capital. This has resulted in the co-creation of popular consumer franchises like Ola, Swiggy and Paytm; bank-rolled roads, airports, oil pipelines and telecommunications assets; and aided the crucial economic task of deleveraging distressed firms. This spigot of private capital has remained open for Indian ventures even as the economy and public markets have witnessed sharp ups and downs.

In fact, private investors have come to play such an important role in the Indian economy that their annual investments amounting to 1%-1.5% of the GDP, once believed to be sufficient to meet the country's growth aspirations, are now proving inadequate. India's economy is reaping its demographic dividends and young entrepreneurs and mature mega firms are taking make-or-buy bets on the consumer markets.

Banking and insurance companies require

billions of dollars in equity capital, privatisation is now on the anvil and an ambitious infrastructure build-out is transforming Tier-II towns. India will now need to attract private capital amounting to 3%-4% of GDP for the 'Great March' that Prime Minister Narendra Modi has flagged off to \$5 trillion GDP. This is why it is important that policymakers or entrepreneurs do not take their eye off the ball based on one-off incidents.

The equity vs. debt argument

There has also been criticism of private equity investors for focussing on debt deals. Today, private capital pools offer many classes of assets, from venture to private equity to venture debt to promoter funding to hybrid instruments. It is only at the promoter's behest that private capital providers structure capital infusions as debt rather than equity deals. Further, promoters are often reluctant to cede control in their ventures and hence end up taking capital in the form of debt.

That's the fallacy of the infamous Indian promoter's 'curse'. Promoters embrace the double jeopardy of wanting to be in 'control' (the magic number of 51%) of their venture, while also believing that their equity is undervalued by the markets. Full of optimism about future pricing, they often resort to high-cost borrowings by pledging their shares. The result becomes evident during volatile times. As to the cost of debt, it must also be understood that the main mandate of private equity investors is to measure, underwrite and price risk. Structured as a limited-life closed-end funds, they have a contractual obligation and fiduciary duty to meet the return expectations of their investors and to return the capital within a relatively short time frame of five-seven years.

But the Siddhartha incident does have one major takeaway: founders in India need more equity funding, so that they can avoid the curse of overleveraging. When entrepreneurs take on aggressively priced debt payable within stringent timelines, it exposes their venture to extreme fragility.

Equity capital in contrast is patient. Companies with growth ambitions should therefore be ideally funded with 40%-50% equity, which can act as their lifeboats in difficult times. Equity funding makes sense for private investors too, as it allows a longer runway to scale up a business. This results in a larger pie for everyone – the founder, investors, lenders and the economy. However, punishing capital based on one event can prove to be a capital punishment for India's entrepreneurial ecosystem.

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Code Red for labour

The proposed codes disempower workers

AKRITI BHATIA & CHANDAN KUMAR

The Centre's proposal to replace 44 labour laws with four codes saw the light of day after Finance Minister Nirmala Sitharaman announced it in her Budget speech. The question not being asked is: aren't these codes antithetical to the very idea of statutory protection of labour and dignified standard of living for workers? It needs to be stated here that the original labour laws, enacted after decades of struggle, were meant to ensure certain dignity to the working-class people.

The most glaring instance of the government's failure to support labour standards is the Ministry of Labour's proposal to fix the national minimum floor wage at ₹178, without any defined criteria or method of estimation. This could lead to a dangerous race to the bottom by individual States, in a bid to attract capital and investments. This is rightly being called 'starvation wage', especially given that the Ministry's own committee recommended ₹375 as the minimum. Another concerning issue is that the four codes exclude over 95% of the workforce employed in informal units and small enterprises, who in fact are in greater need of legal safeguards.

Ambiguity on wording

Above all, there is a deliberate ambiguity maintained on wording and definitions. There is no clarity on who constitutes an 'employer', an 'employee' or an 'enterprise', giving the owner greater discretion to interpret the provisions while making it more difficult for the worker to draw any benefits from them.

To minimise wage bills and compliance requirements, it is proposed that 'apprentices' be no longer considered employees, at a time when evidence indicates that apprentices are made to do jobs of contractual as well as permanent employees. The code even has a provision on "employees below fifteen years of age", which can be construed as legalisation of child labour. The code on wages legitimises and promotes further contractualisation of labour, instead of abolishing it, by insulating the principal employer from liabilities and ac-

countability in the case of irregularities on the part of the contractors.

Slavery-like provision

And if all this were not enough, the wage code also brings back the draconian provision of "recoverable advances", a system that the Supreme Court clearly linked to coercive and bonded labour, wherein distressed and vulnerable migrant labourers could be bonded to work through advance payments. This is akin to modern forms of slavery, also encountered in rural labour markets.

Similarly, the eight-hour workday shift has been done away with, and multiple provisions of increased overtime have been inserted. The code also gives ample alibis to employers to evade bonus payments.

Further, seeking justice against un-



fair practices of employers has become even more difficult now as non-payment of wages will now not be a criminal offence and penalties in case of non-compliance have been reduced. The government wants to provide a "facilitative" rather than a regulatory and punitive environment for the owners, with "facilitators-cum-inspectors" replacing the "inspectors" who used to ensure implementation of various labour laws to aid employees.

Finally, the code on industrial relations too is replete with restrictions, on forming or registering unions, calling a strike (which would entail prior permissions and notices) and seeking legal redress for workers.

To sum it up, it won't be a fallacy to assert that the proposed laws, as they stand, resemble 'employer codes' rather than 'labour laws'.

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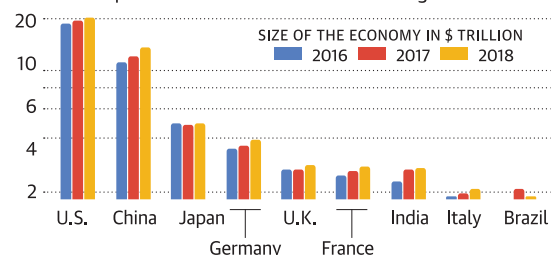
DATA POINT

Downturn continues

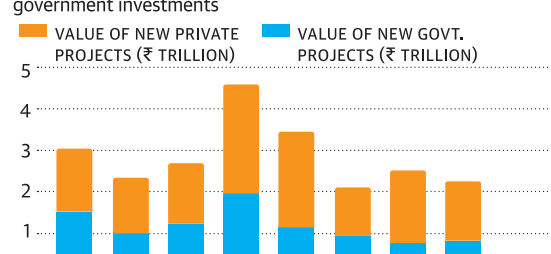
India dropped two places in GDP rankings in 2018 compared to 2017. With a slump in consumption, and new investments reducing to a trickle, the government's aim of making India a \$5-trillion economy by 2024 seems far-fetched.

By Vignesh Radhakrishnan and Sumant Sen

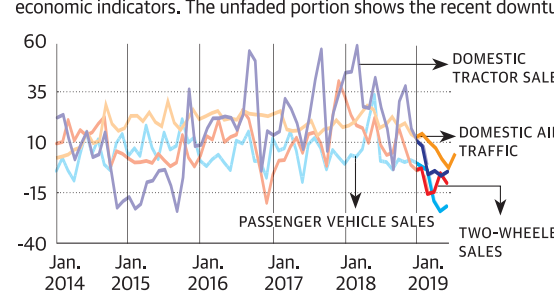
Drop in position | In 2017, the size of the Indian economy stood at \$2.65 tn, the fifth largest. In 2018, India's economy in \$ terms grew by 3.01% to \$2.73 tn. But in the same period, the U.K. and France grew by 6.8% and 7.3%, respectively, pushing India to the seventh place in the World Bank's GDP rankings in 2018



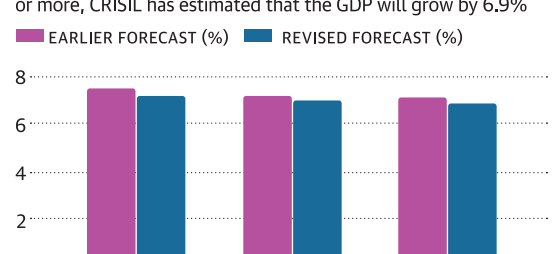
Investment woes | Investments in new projects nosedived to a 15-year low in the quarter ending June 2019. The drop in value of new projects was driven by a dip in both private and government investments



Consumption drops | Three of the four major indicators of the consumer economy recorded negative growth rates in the first half of 2019. The graph shows year-on-year % growth of four macro-economic indicators. The unfaded portion shows the recent downturn



Downward revision | The IMF, Asian Development Bank and CRISIL brought down their GDP projections for India for FY20. While both IMF and ADB have projected that India will grow at 7% or more, CRISIL has estimated that the GDP will grow by 6.9%



Source: World Bank, SIAM, DGCA, Tractors Manufacturers Association, CME, IMF, ADB, CRISIL

The Hindu

FROM THE ARCHIVES

FIFTY YEARS AGO AUGUST 6, 1969

Ice-filled craters on Mars

Television pictures of the Martian South Pole flashed 60 million miles across space last night [August 4] showed ice-filled craters on the edge of the Polar Cap and stretching deep into the Polar region. Scientists at the jet propulsion laboratory here [Pasadena (California)] said pictures transmitted live as the Mariner-7 spacecraft soared across the Martian Pole at a height of 2,000 nautical miles were of very high quality. The pictures, which took five minutes to reach earth, revealed craters and the outlines of the Polar Cap. Mariner-7, though suffering from communications defects because of an apparent impact with a meteor last Wednesday [July 30], has sent better pictures than its twin, Mariner-6, which flashed over the Martian equatorial region a few days earlier. Dr. Robert Leighton, Director of the Mariner television experiment, announced proudly over the jet propulsion laboratory loud-speaker as the first close-up began to flicker on to television screens: "These pictures are coming to you live from Mars." Mariner-7 swept from the equator to the South Pole and then moved behind the dark side of Mars.

A HUNDRED YEARS AGO AUGUST 6, 1919.

Governor's Visit to Famine Area.

His Excellency accompanied by the Collector Mr. Cotterell, Mr. Dodsworth, Kallikota Estate Manager, Mr. Greg, Engineer, Captain Powell, A.D.C., and the Young Zamindar of Kallikote left for evening inspection at 4.30 yesterday [August 4] and motored a distance of 20 miles to Atagada Mathura. On the way His Excellency had a view of the Degam village on the 16th mile from Kallikote where a tank bund 2,000 feet long is sectioned and turfed. Near this there are two other tank bunds of equal length where similar work is going on. At Atagada Mathur the work is turfed and raising a tank bund 1,806 feet long. There are 1296 workers and 552 dependents. His Excellency walked some distance to see Badosagor or the big tank where earth work with a view to raise the bund was going on. This work was begun on the 12th May and finished on the 20th July. The work that yet remains to be done is sectioning and turfed. There were two thousand people employed on the work. A katcha country cart road from Mathura, fifteen miles long, has been converted into a pukka road.