

Opinion

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IT IS A CRIME  
Woman & child development minister Smriti Irani  
What he has done is condemnable, using issues of crime against women for politics. Women will give him a reply but I want to ask the men here - is every man in India a rapist, according to Rahul Gandhi

RationalExpectations

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UTI and the govt's very limited writ

If even four PSU banks/FIs can't be made to obey Sebi's rules, what does it say for the government's ability to get things done?

THESE ARE SEVERAL strands to US asset management firm T Rowe Price's—T Rowe Price has \$1.12 trillion of assets under management—running dispute with the Indian government over control of UTI mutual fund, but two are especially relevant right now.

First, in the context of the government wanting to lower its stake in various PSUs to less than 51%, the UTI case makes it clear this doesn't make an iota of a difference. Second, the fact that the market-regulator Sebi hasn't been able to enforce its writ on four government-owned banks/financial institutions makes it clear that regulation doesn't mean much when the government decides it doesn't want to adhere to them. Neither is good news from the point of view of restoring investor confidence in the economy. There is, in addition, a recent CAG report that points to event the Union Cabinet having a limited writ when it comes to making the system perform—that includes the bureaucrats, the regulators, the courts etc—but this is something we will come to later.

Let's first deal with why the government reducing its stake to below the controlling level of 51% is irrelevant. While this is being contemplated to reduce the government's control over them which, in turn, will allow these PSUs to operate freely, the government has no direct stake in UTI, and yet it controls it absolutely! While T Rowe Price owns 26% of UTI, three banks—SBI, PNB and Bank of Baroda—and LIC own 18.25% each; this gives the government effective control even though UTI is not even a PSU. In 2011, barely a year after the government sold a stake in UTI to T Rowe Price to professionalise the mutual fund, the finance ministry was trying to foist its nominee—the brother of the advisor to the then finance minister (*bit.ly/36t7cLO*) who had no experience in the financial sector—as the head of UTI. It was T Rowe Price's 26% shareholding—this is a critical level in Indian company law as it allows the stakeholder to block certain actions by the board—and a professional board of UTI's trustee company that allowed this to be beaten off. The battle, though, took its toll as UTI remained headless for around two years as a result.

After the US-64 fiasco, when UTI was divided into 'good UTI' and 'bad UTI', the four PSUs were asked to buy a stake in the UTI mutual fund. Since Sebi rules don't allow anyone who runs a mutual fund—a 'sponsor' in jargon—to run another mutual fund, and all four have their own funds, they were allowed a special exemption. Sebi, however, came out with guidelines on "avoiding conflict of interest between UTIMF and the sponsors"; so, for instance, sponsors were not allowed to "nominate any employee working with them on the Board of the AMC and the trustee company or any committee of the UTI Mutual Fund".

It is this professionalising that the government used to convince T Rowe Price that UTI would be run as a board-managed firm; T Rowe Price's 26% stake came from the four PSUs diluting their stakes accordingly. Despite the government's assurances and Sebi's guidelines, the four PSUs continued to try and interfere in UTI's running; eventually, in March 2018, Sebi said the four PSUs would have to reduce their stakes in UTI to 10% within a year, in keeping with the rules for all other sponsors with more than one asset management company (AMC). The shadow boxing, however, continued and, at different points in time, both SBI and PNB attempted to wrest control of UTI leading to, in August last year, T Rowe Price filing a case in the Bombay High Court against the government; T Rowe Price asked it to prevent the four PSUs from scuttling UTI's IPO.

The IPO was critical since it would allow the four PSUs to dilute their stake to the Sebi-mandated 10% at a market-determined price and, since T Rowe Price had also agreed to, under certain circumstances, cut its stake to below 26%, it would pave the way for a genuinely board-managed UTI where no single shareholder controlled the board; though the fact that the four PSUs acted as one—and took orders from the government—made it always likely the government would call the shots if T Rowe Price's stake fell below 26%. Indeed, ahead of the IPO, the finance ministry tried to push for a small IPO—of, say, 5-10% of the equity, contributed equally by all five shareholders—ostensibly to test the waters. What this would do, however, was to reduce T Rowe Price's stake to below 26% and, with the majority voting rights with PSUs, the government could then again try and foist its nominee as the UTI chief!

While a supposedly independent Sebi didn't enforce its rules in March 2019, it has now extended this deadline to December 2020; whether more extensions will be given is unclear, but it shows how limited Sebi's writ is when it comes to the government or PSUs. Given this, now that talks of an IPO have once again gathered steam, what is the guarantee that the four PSUs will not act in concert—at the behest of the government—even when their individual stakes are at 10% or below? With no permanent CEO since Leo Puri left last year in August, and the chances of a truly independent UTI still bleak, it is possible the IPO will get impacted. Till UTI is genuinely board-managed, it is unlikely T Rowe Price which has \$1.12 trillion in assets under management will ever raise money from its investors for UTI to manage; the big advantage of getting T Rowe Price as a sponsor, amazingly, has never been tapped due to the PSUs trying to muscle it out.

The CAG report on PSUs is even more worrying as it confirms the government is quite blasé when it comes to following rules. The chapter on disinvestment notes that, for several years now, the government has been meeting its targets, but this has come with very poor retail participation and with little genuine strategic sales. In FY18, the CAG points out, the cabinet approved 24 PSUs for strategic sale; all were to be completed by June 2018, but only one could take place, and that too was one PSU (ONGC) buying another (HPCL), for ₹36,915 crore.

While Sebi had mandated, in 2015, that all listed firms must have a public float of 25%, by August 2017, PSUs were given an extra year for some reason—but 17 PSUs have still not complied. The finance ministry—not Sebi—has now extended this to August 2020. And, more than a decade ago, in October 2009, the cabinet said that all unlisted, but profitable PSUs would be listed; but only 59 of 90 PSUs that satisfy the criterion are listed. Apart from the fact that large amounts of public funds could get freed up via listing, this shows that even the cabinet's writ is limited. To talk of sweeping economic reforms in such a situation seems a bit of a bad joke.

SoundDECISION

Delhi is looking to rigorously implement the Noise Pollution Rules 2000. States should take a cue from it

WHEN APPLE LAUNCHED a feature to track noise via its watch, not many had imagined that it would have an application in a developing country like India. India does have rules to track noise levels, but these are observed more in their flouting. Delhi, however, is looking to change that. According to a *Times of India* report, it has asked all DMs and police to ensure that Noise Pollution (Regulation and Control) Rules, 2000 are followed in spirit. After the NGT order in August this year, the government will be asking for installation of sound limiter devices at private functions. The device shall monitor the decibel level, and if the audio system exceeds a pre-set level of volume, for say, 10 seconds, it shall cut off the power supply. Religious processions or marriages won't be able to blast their music in residential areas. The government will also enforce the ₹10,000 fine along with the seizure of loudspeaker, and ₹1 lakh for the use of DG set.

While the rules mandate a 55dBA limit for the day and 45dBA at night for residential areas, the problem is implementation. A sound limiter may be helpful, but the chances of people gaming the system are high. A helpline number and a website also exist to report such incidences, which indeed is a good start, but it all depends on enforcement. Given how increased incidence of hyperacusis, a hearing and neural disorder, is being linked to exposure to noise pollution, Delhi showing intent to implement the Rules is welcome, others should follow.

ECONOMIC SLOWDOWN

WITH BOTH FISCAL AND MONETARY POLICY AT THE END OF THE ROAD, THERE IS LITTLE THAT CAN BE DONE IN THE SHORT RUN. PVT SECTOR CAN'T PULL ALL THE WEIGHT EITHER

A long road to recovery

MADAN SABNAVIS

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Views are personal



bonuses and variable pay come in. Any pause here can have serious consequences for the system.

The economy is in the classic state of liquidity trap which was highlighted by Keynes during the time of the Depression, when lowering of interest rates ceases to affect demand for funds. This has happened in Japan and the euro region too, where interest rates have lost their relevance. The rudimentary theory of demand, supply and prices does not work as the underlying assumption of *ceteris paribus* no longer holds in the present context. Credit risk perception is high and banks do not want to lend money to all and sundry given the NPA overhang.

With both fiscal and monetary policy at the end of the road, there is little that can be done in the short run. Increasing the spending of the government by say ₹2 lakh crore is an option which looks unlikely, as it sends wrong signals to the market. Therefore, the ball is back in the court of the private sector.

The private sector would rather not get into infrastructure given the challenges of finance. Usually, these projects would not have a good rating to be able to command funds from the debt market. Further, with several large companies waiting for the IBC to resolve the debt issue, possible investors may prefer to purchase them in the market rather than start afresh. Add to this the fact that consumption has slowed down and it means that there is surplus capacity in most industries which has made further investment non-viable right now.

Therefore, the path to recovery is going to be a slow one. Three ingredients are required which have to fall in place and will do so only over a period of time.

First, the financial sector has to get out of the labyrinth. It started with the AQR affecting the PSBs and later the private banks. Subsequently, the NBFC crisis has dealt a blow to infra finance, real estate and SMEs, thus choking the financial system. This piece has to be set right, and the news of possibly more hidden NPAs on bank's books could prolong the recovery process. It has literally been a case of survival of the fittest in the financial world. This is within the control of the government, and RBI has to be expedited.

Second, the rural economy still holds the clue to the recovery process and in a way is a necessary condition, though not a sufficient one. It is critical as it is independent of what happens in the industrial world, and hence, the optimal output and price are the key determinants to demand recovery. Any disruption, as has been the case with the vegetables and pulses crops this year, would upset the appereat as there are inflationary implications that make monetary policy even more difficult to conduct. Clearly, everything is not within the control of any entity, and here, the states hold the key. The focus has to be on making farming more attractive and should be run as commercial ventures rather than a sector to be sympathised with through loan waivers and cash transfers. Policy has to aim at increasing productivity of land and providing end-to-end solution till the marketing stage. State farming has

to be seriously considered.

Third, job creation is necessary to generate sustainable income that will generate demand. Employment unfortunately gets linked with growth and normally follows the latter and cannot be created unilaterally. Unless there are more households with spending capacity, consumption won't increase. As corporates cannot employ persons and keep them on the bench (given that they have already lost pricing power in the last three years), the emphasis must be more on gig workers who are able to generate income by working on a contractual basis as consultants. In the medium term, the education system should bring in courses that suit the

needs of the day—specific engineering requirements or handling of back-office jobs, so that the human race does not head towards the standard courses of medicine, engineering and management. Demand will grow for such skill-sets, and short-term courses of 3-6 months which address these requirements will be appropriate.

Evidently, there are no quick solutions here, and it can be said that most

alternatives have already been explored by the government with limited success. Removing administrative bottlenecks is a must; and retaining processes merely because there are legacy issues in various government organisations has brought impediments for entrepreneurship. This environment of doing business at the micro-level has to improve, and the federal structure involving multiple clearances and permissions needs to be done away with (just like what the GST has done) to smoothen the process. Getting in marginal improvements to break the World Bank Doing Business Code does not work except for getting in newspaper headlines. There has to be a deeper commitment.

LETTERS TO THE EDITOR

On CAB's impact

The passage of the Citizenship (Amendment) Bill (CAB), 2019, by Parliament marks a turning point in the country's history. If a Partition was imposed on it in 1947, it has now done it on itself. The CAB is a law that technically and legally only purports to give citizenship to those who have come fleeing neighbouring countries, but whose effect, by its deliberate exclusion of some of these migrants on the basis of religion, is to reflect the same segregation on its citizens internally. Though no separate space and territory has been earmarked for Muslims, the Bill has sent out the message that they are lesser citizens, and the country is for Hindus only. The entire North-East, which will be directly and immediately affected by the Bill, has risen in protest against it, though the government tried to buy them off with some exceptions and concessions. It is for the entire country to resist the Bill, and to ensure that the secular core of the Constitution and the republic, founded on the equal protection and equality before the law of all within its territory, survives this assault on it. — Ansari Tarique, Bengaluru

Assam protests

Two people were killed and several injured in police firing as the situation in Assam, which witnessed violent protests against the Centre's Citizenship (Amendment) Bill on Wednesday. It is an extremely terrible news for the common masses. All common people and major opposition parties are opposing the Bill as being unconstitutional in spirit, and violative of the Constitution. I think that the government is playing with constitutional values and morality. With the passage of the CAB, the BJP has exposed the full face of its majoritarian agenda. — T Anwar, Karnataka

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Economic slowdown: Crisis or blip?

For India to tackle its economic slowdown, it needs to reverse its impulses for centralisation, needs to be more open, and must create a robust infrastructure for digital communications

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THE YEAR 2019 has been a momentous one for India. On the political and societal front, one has seen a centralisation of political power, accompanied by measures to homogenise Indian society in ways that seem to be at odds with the country's recent history and ideals. My view is that these efforts have also affected the economy, both by taking away attention from core economic issues but also by shrinking the set of perspectives on economic policy that are valued within the corridors of power.

The Indian economy has been in the grip of a worrying slowdown, one which policymakers have been slow to acknowledge and to come to grips with. One can argue that the problems are short term ones, the result of a conventional macroeconomic slowdown, global economic uncertainties, and perhaps some specific structural reforms which have been initially disruptive, but will soon bear fruit. In this perspective, the slowdown is a blip that will disappear.

But, there is an alternative view that has been recently expressed very forcefully by Ashoka Mody, now at Princeton University, who has written in the past on India's demographic dividend, as well as its industrial dynamics. His latest analysis, in the form of an OpEd, has a title that makes his position clear: How India's growth bubble fizzled out. Mody views the growth experience of India since the 1991 reforms as being driven by finance, real estate and construction, and argues that this is the bubble that has now popped. He emphasises the lack of investment in urban infrastructure and human capital, and the erosion of Indian manufacturing, and says that it will take a generation to catch up on those fronts, which are critical for sustained future growth. From this perspective, India is in a crisis.

There are strong elements of truth in

Mody's analysis, but one should not underestimate the changes that were wrought in the last three decades, to the point where five percent growth is considered a barely acceptable floor, rather than an aspirational rate of growth. There have been improvements in tax policy, in infrastructure, in financial systems, and in attitudes, though all of these are now under stress. But, where Mody concludes that there are "no easy fixes", I would argue that there is a way forward that can begin to turn around the economy relatively quickly.

First, the central government has to reverse its impulses for centralisation of everything. The terms of reference of the 15th Finance Commission seem to me to reflect those impulses, looking for ways to reverse the greater share of tax revenues, awarded to the states by the previous commission, along with somewhat greater flexibility. Instead, the Centre needs to allow the states more room and ability to spend money, perhaps with nudges towards priorities such as education and urban infrastructure. If the centre needs to discipline the states' spending, it should invest in strengthening their fiscal management and accounting systems, all the way down to cities and towns, rather than trying to punish or reward them based on meeting fiscal deficit targets.

Second, the Centre needs to be more open. There are many dimensions of openness. The only one that seems to have received attention is measures to attract foreign investment, by liberalising restrictions. But, everything else the Centre has done has worked against openness. There has been hostility to trade measures that might support the integration of Indian manufacturing into regional production networks. The lack of progress on this front, precisely at a time when it was both needed and pos-

sible, has been shocking. Second, opening up higher education to domestic and foreign entrants would go a long way to addressing human capital gaps at the upper end of the educational spectrum. At a time when the global higher education sector is in turmoil, and flexibility is becoming the norm, Indian higher education policy has lagged badly. A vital component of policy in this case would be creating an institutional and social environment where faculty from other countries (including those of Indian origin) want to spend substantial periods of time in India. Instead, the government's political and societal impulses have had the opposite impact. A third dimension of openness is being willing to gather inputs on economic policy from a wide range of people with appropriate expertise. Here, too, the current government appears to have regressed.

A third area where concerted government action can have rapid payoffs is in the creation of a robust infrastructure for digital communications. This implies tackling the continued deficiencies of the electric power sector—perhaps the one place where pressure on the states is needed for further reform. But, the approach to building and improving the communication networks has to change. Currently, there are two inefficient government-owned firms, and a dominant, almost predatory private sector behemoth. This is not a recipe for long-run growth. India is large enough to support more competition in telecoms, and there is enough potential for growth to make it attractive for new entrants, if the playing field is level. Public-private partnerships for investment in the needed infrastructure may work here. Policies will need to be carefully designed, but can yield benefits to industry, education, finance, and almost every part of the economy.







ILLUSTRATION: ROHNIT PHORE

COMPUTER SECURITY

# Spooky

Offering software for snooping to governments is a booming business. A flurry of lawsuits has drawn attention to a growing part of the cyber-security industry

ON OCTOBER 2, 2018 Jamal Khashoggi, a Saudi journalist and critic of the kingdom's government, visited its consulate in Istanbul in order to secure documents needed for his upcoming marriage. He did not come out alive. After initially denying responsibility, the Saudi government admitted that Khashoggi was killed in a "rogue operation".

Two months later Omar Abdulaziz, another Saudi dissident, filed a lawsuit in Israel against NSO Group, an Israeli software company. Abdulaziz alleges that the NSO Group had licensed Pegasus, a piece of spyware that snoops on smartphones, to the Saudi government, which used it to spy on him—and, through him, Khashoggi. NSO Group denies that its software was used against Khashoggi. In October WhatsApp, an encrypted-messaging firm owned by Facebook, also sued the firm, saying its software had been used to hack roughly 1,400 of its users.

WhatsApp says it has urged America's Department of Justice to open an investigation. nso Group disputes WhatsApp's allegations "in the strongest possible terms". On November 26 a number of NSO Group's workers filed a lawsuit against Facebook, claiming that the social-media giant has unfairly blocked

their private accounts.

The flurry of lawsuits has drawn attention to a little-known corner of the cyber-security industry. Most cyber-security firms focus on defending clients from hackers and malware. But some, including NSO Group, as well as Gamma Group (an Anglo-German firm) and Hacking Team (an Italian one which in April merged with another company to create Memento Labs), sell software to help governments access online data on persons of interest. Business appears to be brisk.

The opaque nature of the market for "intrusion software" means the job of trying to compile figures falls mostly to academics and NGOs. NSO Group, which is unusually candid, says its revenue in 2018 was \$250 million. In February Novalpina Capital, a British private-equity firm, bought a majority stake in the firm. The valuation implied by the transaction reportedly placed the firm in the "unicorn" club of startups worth over \$1 billion. Most of NSO Group's competitors are much smaller, says John Scott-Railton, a researcher at the University of Toronto's Munk School of Government. Danna Ingleton of Amnesty International, a human-rights group, reckons that the market is worth at least several billion dollars.

The firms are understandably coy about revealing their clients' identities. But in 2015 a widely reported data breach appeared to reveal a list of Hacking Team's

clients. The list included a Saudi spy agency and the Sudanese government of Omar al-Bashir, as well as the FBI, Malaysia's Anti-Corruption Commission and the state government of Bayelsa, a province of Nigeria. Memento Labs did not respond to requests for comment.

The industry has been around for a while, but Scott-Railton says that documents leaked in 2013 by Edward Snowden, an American spy—which lifted the lid on America's electronic-surveillance capabilities—gave it a big boost. "Other states said 'how do we get hold of something like that?'" The leaks also pushed Western technology firms to encrypt more web traffic and instant messages, making existing forms of eavesdropping harder. Some private firms now offer governments that do not have the expertise to breach such defences themselves the tools to do so. Many are staffed by former Western spooks. According to a leaked personnel roster obtained by the *New York Times*, DarkMatter, based in the United Arab Emirates, has hired several people who used to work for the National Security Agency, America's main signals-intelligence organisation. DarkMatter did not reply to requests for comment.

### Trench coats and grey hats

Most of the companies say they assist law enforcement in fighting terrorism, drug smuggling or other misdeeds. At a conference in November Shiri Dolev, nso Group's president, complained about the coverage of her firm. She argued that services such as WhatsApp are used by some "as a vehicle for terrorism and crime", and that software such as Pegasus is vital. The firm insists its products are "not a tool to be weaponised against human-rights activists or dissidents". In September it announced a new human-rights policy, based on un guidelines; it reckons it is the first firm in the industry to do so. Even before that, says a spokeswoman, the firm had turned down around \$100 million of business on ethical grounds in the past three years.

In theory the export of hacking software is controlled by the same laws that regulate the sale of weapons. In practice most observers think such restrictions have little bite. David Kaye, the un's special rapporteur on freedom of opinion and expression, has described the market for spyware as "out of control" and "unaccountable". State use of the industry's products to target political opponents, journalists and others seems common, says Ingleton.

Previous lawsuits have foundered, she adds, in part owing to their high-tech, international nature. Courts first need to be convinced that plaintiffs have suffered an injury, that the injury could be traced back to the defendant, and that the court can redress it. Even if this "standing" can be established, it is hard to procure evidence. "And even then it can be hard for some judges to understand what is being presented," she says. In a recent case in America "Mr Kidane", a pseudonymous American with links to Ethiopia, alleged that the Ethiopian government had been spying on him and his family using Fin-Spy, one of the Gamma Group's products. A judge threw out the case on the grounds that the alleged spying did not occur entirely within America's borders. The Gamma Group did not respond to requests for comment.

All the recent publicity has nonetheless increased pressure on the companies. In November Ron Wyden, an American senator, called for an investigation into whether NSO Group's products had been used against American citizens. Mr Kaye wants a moratorium on exports until stricter laws can be drawn up. And the WhatsApp lawsuits marks an escalation by the big technology companies, which want to safeguard their users' data.

A serious crackdown remains unlikely, thinks Edin Omanovic at Privacy International, another NGO, owing partly to the official background of many employees at such firms. "Enforcement has always been a problem within the arms industry," he says. Until that changes, purveyors of snooping software can expect to thrive.

THE ECONOMIST

NEW EDUCATION POLICY

# Towards Industry 4.0

ANINDYA MALICK

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Institutions and faculty should have the autonomy to innovate

THE ADVENT OF the fourth industrial revolution places us in the midst of continuous disruption by digital technologies. This revolution is expected to transform economies, jobs, and the society itself through new technologies and processes. With education being the key component in shaping the future workforce, the academic system needs transformation.

The Indian education system will need to focus on creativity and lifelong learning, essential for a career with continuous disruptions. It is envisaged that 65% of children entering primary school today will ultimately end up working in completely new job types that don't yet exist. Accordingly, it is important to imbibe a culture of knowledge seeking and lifelong learning during the formative years.

The Draft National Education Policy (NEP) 2019 seems to have been primarily developed based on the above premise.

A key highlight of NEP 2019 in the area of school education is the proposed structuring of school education as Foundational (comprising 3 years of pre-school & grades 1-2); Preparatory (comprising grades 3-5); Middle (comprising grades 6-8) and High (comprising grades 9-12 in 2 phases of grades 9& 10 and 11& 12). The structure takes cognisance of a child's developmental journey and ensure s critical characteristics like knowledge seeking, logical thinking, social skills like communication, teamwork, etc are imbibed. This also transitions away from the current culture of rote learning.

The proposed transformation will require changes in pedagogy; teachers will, thus, need capacity development. Teaching and learning approaches are expected to be more interactive through discovery, discussion and analysis-based learning.

Teachers will need to be provided career progression plans, greater autonomy & responsibility. NEP 2019 discusses the courses for teachers' training including shorter duration courses for skill & expertise upgradation.

The initiative to move the higher education system to large multidisciplinary universities, colleges, and higher education institution (HEI) cluster is a key highlight of the NEP 2019, with institutes proposed to be categorised as "research oriented" or "teaching oriented".

Institutions and faculty should have the autonomy to innovate on matters of curriculum, pedagogy, and assessment—informed by a broad overall framework of higher educational qualifications that ensures consistency across institutions and equivalence across programmes, both in Open & Distance Learning (ODL) and the traditional 'in-class' learning.

NEP 2019 proposes multidisciplinary learning which entails integrating humanities and arts streams with STEM (Science, Technology, Engineering, Mathematics). Integration of multidisciplinary courses is expected to result in increased creativity and innovation, critical thinking and higher-order thinking capacities, problem-solving abilities, teamwork, communication skills, deeper learning and mastery of curricula across fields, and increases in social and moral awareness.

A motivated faculty having the required experience and expertise is the single most critical factor for providing an efficient and productive Higher Education ecosystem. NEP 2019 proposes measures to be adopted for improving faculty effectiveness and responsiveness through increased & diversified faculty, reduced student-teacher ratios, flexibility and autonomy in curriculum design and pedagogical approaches which are likely to also help keep the faculty motivated and invested.

The National Education Policy, 2019 aims to bring the higher education sector in India on par with the international standards and contemporary practices. It has clearly articulated the intentions in striving forward with a retrospective analysis of the traditions of India. The policy also endeavours inclusivity, and accessibility for all the socio-economic classes of the society with the agenda of 'Development for All' and creating the future workforce for India and the world.

AFTER THE NCP, the Congress party and the Shiv Sena announced their alliance, certain voters moved the Supreme Court to stop the 'unholy alliance' (as termed by them), since it defeats electoral mandates. In recent times, as mandates are getting more and more fractured, post-poll alliances have become inevitable in electoral politics. In the last assembly election in Maharashtra, the BJP formed a post-poll alliance with the Shiv Sena; in Jammu and Kashmir, the BJP allied with the PDP post-elections; and in Haryana, the BJP got Dushyant Chautala into its crew after the results. These have been instances where post-poll alliances have been entered into by parties who initially drew swords against each other. For a long time, it has been debated that the abject immorality of alliances between parties who fought elections against each other must be scrutinised and demotivated. Now the question before the Supreme Court is, whether these alliances are permissible under the constitutional scheme and are they not contrary to democratic ethos? While allowing coalition governments, did the framers of the Constitution anticipated and intended such coalitions?

It is pertinent to note that the Tenth Schedule was incorporated in our Consti-

# A coalition of convenience

India must evolve a legal framework to curb unethical post-poll alliances

BHASKAR KUMAR

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tution to prevent unethical defections and horse-trading. Hence, it is need of the hour that the definition of a party under anti-defection and the Constitution must be construed in a broad manner, so that the objective of the Tenth Schedule gets accomplished. To make informed choices, voters should know who they are voting for, and in cases of post-poll alliances this very foundational aspect of democratic politics is compromised. In the *Kihoto Hollohan vs Zachillhu* case, the Supreme Court elaborated the objective behind anti-defection law. It observed that the law seeks to recognise the practical need to place the proprieties of polit-

ical and personal conduct (whose awkward erosion and grotesque manifestations have been the bane of the times) above certain theoretical assumptions, which, in reality, have fallen into a morass of personal and political degradation. The Supreme Court further held that the objective of the Tenth Schedule is to curb the evil of political defections motivated by the lure of office or other similar considerations that endanger the foundations of our democracy. The remedy proposed is to disqualify the Member of either House of Parliament or of the State Legislature, who is found to have defected, from continuing as a Member



NCP CHIEF SHARAD PAWAR, SHIV SENA CHIEF UDDHAV THACKERAY AND MAHARASHTRA CONGRESS PRESIDENT BALASAHEB THORAT

of the House. The Supreme Court emphasised that the provisions are salutary and are intended to strengthen the fabric of Indian parliamentary democracy by curbing unprincipled and unethical political defections.

A political party functions on the strength of shared beliefs. Any freedom of its members to vote as they please independently of the party's declared policies will not only embarrass its public image and popularity, but also undermine public confidence in it, which, in the ultimate analysis, is its source of sustenance—nay, indeed, its very survival. The cases of post-poll alliances have now become equally

unprincipled and unethical, since parties with diametrical ideologies and policy objectives come together, thus undermining public confidence.

To curb the menace, there is a need to expand the ambit of the Tenth Schedule by adding a provision that prevents post-poll alliances between parties who fiercely contested against each other in the first place. The Election Commission must be directed to broadly classify parties on the basis of their ideology, policy objectives, beliefs and ideals, so that their specific commitments are recognisable. Only selective post-poll alliances should be permitted, maybe where parties share a considerable extent

of beliefs, ideologies and policy objectives. Since pre-poll alliances represent themselves as a single unit with a shared agenda agreed upon by both parties, voters have the option to form informed choices. A common feature between a parliamentary democracy and a constitutional democracy is that both acknowledge that the government rests upon the consent of the governed, given by means of elections based on universal and equal suffrage.

To address this concern, parties must be mandatorily directed to announce certain fundamental ideals and values including the broad policy objective that would not be compromised even after elections. And if and only if two parties entering into a post-poll alliance satisfactorily show that their broad values and ideals are not mutually conflicting, should they be allowed to form an alliance. This will ensure that the voter's primacy in a parliamentary democracy remains intact. It must be understood that Indian parliamentary democracy is legislator – constituent-centric model, which means a subordination of the interest of parties over the relationship between a legislator and his constituents. Hence, when interpreting the Tenth Schedule in its entirety, the Court must resort to that interpretation which expands the scope of the schedule in favour of voters.