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TELLING NUMBERS

Indian passport ranked 84th in the world, Japan's on top

JAPAN HAS the world's strongest passport; Afghanistan, at rank 107, the weakest. The Indian passport is closer to the bottom, ranked 84th in the world, according to the latest edition of the Henley Passport Index, widely acknowledged to be the most reliable of such rankings.

According to Henley & Partners, the residence and citizenship planning firm that publishes the ranking, the Index lists the world's passports "according to the number of destinations their holders can access without a prior visa". The ranking is based on data from the International Air Transport Association (IATA), a trade association of some 290 airlines, including all major carriers.

The index includes 199 different passports and 227 different travel destinations, the publisher of the rankings said in a press release last week. The data are updated in real time as and when visa policy changes come into effect, the release said.

Japan has been topping the Index for three straight years; according to the 2020 index, its citizens are able to access 191 destinations without having to obtain a visa in advance.

Singapore, in second place (same as in 2019), has a visa-free/visa-on-arrival score of 190. Germany is No. 3 (same position as in 2019), with access to 189 destinations; it shares this position with South Korea, which dropped from the second place it held a year ago, the release said.

The US and the UK have been falling consistently over successive Indices. Both countries are in eighth place in 2020; a significant decline from the No. 1 spot they jointly held in 2015.

"The Index's historic success story remains the steady ascent of the UAE, which has climbed a remarkable 47 places over the past 10 years and now sits in 18th place, with a visa-free/visa-on-arrival score of 171," the release said.

Since the index began in 2006, the Indian passport has ranked in a band of 71st to 88th. (The number of passports ranked has, however, varied from year to year.) The Indian passport's 2020 ranking of 84th translates into visa-free access to 58 destinations, including 33 which give Indians visas on arrival. The Indian passport ranked higher in both 2019 (82, with visa-free access to 59 destinations) and 2018 (81, with visa-free access to 60 destinations).

Twenty of the 58 visa-free access destinations in the 2020 list are in Africa, and 11 each in Asia and the Caribbean. Serbia is the only European country to which Indian passport holders can travel visa-free. There is no major or developed country to which Indian passport holders have visa-free access.

INDIAN PASSPORT OVER THE YEARS

Year	Henley rank	Access to destinations
2006	71	25
2007	73	—
2008	75	37
2009	75	—
2010	77	50
2011	78	53
2012	82	51
2013	74	52
2014	76	52
2015	88	51
2016	85	52
2017	87	49
2018	81	60
2019	82	59
2020	84	58

MOST POWERFUL PASSPORTS, 2020

Passport	Henley rank	Access to destinations
Japan	1	191
Singapore	2	190
S Korea	3	189
Germany	3	189
Italy	4	188
Finland	4	188
Spain	5	187
Luxembourg	5	187
Denmark	5	187

All information: Henley Passport Index 2020 and earlier editions

SIMPLY PUT QUESTION & ANSWER

Centre-state disputes and Art 131

What is Article 131, under which Kerala has moved SC against the CAA? How does this challenge differ from the other petitions filed against the law? What aspects of India's federal structure does the case throw up?

Protests in Kochi against the new citizenship Act earlier this month. Chief Minister Pinarayi Vijayan, seen below with JNU Students Union president Aishe Ghosh who was attacked by goons in the university on January 5, has asked non-BJP Chief Ministers to consider steps to oppose both the CAA and the NPR. *PTI*

APURVA VISHWANATH
NEW DELHI, JANUARY 15

ON TUESDAY, Kerala became the first state to challenge the Citizenship Amendment Act (CAA) before the Supreme Court. However, the legal route adopted by the state is different from the 60 petitions already pending before the court. The Kerala government has moved the apex court under Article 131 of the Constitution, the provision under which the Supreme Court has original jurisdiction to deal with any dispute between the Centre and a state; the Centre and a state on the one side and another state on the other side; and two or more states.

On Wednesday, the Chhattisgarh government filed a suit in the Supreme Court under Article 131, challenging the National Investigation Agency (NIA) Act on the ground that it encroaches upon the state's powers to maintain law and order.

What is Article 131?

The Supreme Court has three kinds of jurisdictions: original, appellate and advisory.

Under its advisory jurisdiction, the President has the power to seek an opinion from the apex court under Article 143 of the Constitution.

Under its appellate jurisdiction, the Supreme Court hears appeals from lower courts.

In its extraordinary original jurisdiction, the Supreme Court has exclusive power to adjudicate upon disputes involving elections of the President and the Vice President, those that involve states and the Centre, and cases involving the violation of fundamental rights.

For a dispute to qualify as a dispute under Article 131, it has to necessarily be between states and the Centre, and must involve a question of law or fact on which the existence

of a legal right of the state or the Centre depends. In a 1978 judgment, *State of Karnataka v Union of India*, Justice P N Bhagwati had said that for the Supreme Court to accept a suit under Article 131, the state need not show that its legal right is violated, but only that the dispute involves a legal question.

Article 131 cannot be used to settle political differences between state and central governments headed by different parties.

So how is a suit under Article 131 different from the other petitions challenging the CAA?

The other petitions challenging the CAA have been filed under Article 32 of the Constitution, which gives the court the power to issue writs when fundamental rights are violated. A state government cannot move the court under this provision because only people and citizens can claim fundamental rights.

Under Article 131, the challenge is made when the rights and power of a state or the Centre are in question.

However, the relief that the state (under Article 131) and petitioners under Article 32 have sought in the challenge to the CAA is the same — declaration of the law as being unconstitutional.

But can the Supreme Court declare legislation unconstitutional under Article 131?

A 2012 dispute between Bihar and Jharkhand that is currently pending for consideration by a larger Bench of the court will answer this question. The case deals with the issue of liability of Bihar to pay pension to employees of Jharkhand for the period of their employment in the former, undivided Bihar state.

Although earlier judgments had held that the constitutionality of a law can be examined under Article 131, a 2011 judgment in the case of *State of Madhya Pradesh v. Union of India* ruled otherwise.

Since the 2011 case was also by a two-judge Bench and was later in time, the court could not overrule the case. However, the judges did not agree with the ruling.

"We regret our inability to agree with the conclusion recorded in the case of *State of Madhya Pradesh v. Union of India and Anr. (supra)*, that in an original suit under Article 131, the constitutionality of an enactment cannot be examined. Since the above decision is rendered by a coordinate Bench of two judges, judicial discipline demands that we should not only refer the matter for examination of the said question by a larger Bench of this Court, but are also obliged to record broadly the reasons which compel us to disagree with the above-mentioned decision," the court ruled in 2015, referring the case to a larger Bench.

Incidentally, the two judges who made the 2015 reference were Justice J Chelameswar (retd) and the current Chief Justice of India S A Bobde. The case is set to be heard in two weeks by a three-judge Bench comprising Justices N V Ramana, Sanjiv Khanna and Krishna Murari.

The decision of the larger Bench in *State of Bihar v. Jharkhand* would have a bearing on Kerala's challenge to the CAA.

Can the Centre too sue a state under Article 131?

The Centre has other powers to ensure that its laws are implemented. The Centre can issue directions to a state to implement the laws made by Parliament. If states do not comply with the directions, the Centre can move the court seeking a permanent injunction against the states to force them to comply with the law. Non-compliance of court orders can result in contempt of court, and the court usually hauls up the chief secretaries of the states responsible for implementing laws.

Is it unusual for states to challenge laws made by Parliament?

Under the Constitution, laws made by Parliament are presumed to be constitutional until a court holds otherwise. However, in India's quasi-federal constitutional structure, inter-governmental disputes are not uncommon.

The framers of the Constitution expected such differences, and added the exclusive original jurisdiction of the Supreme Court for their resolution. The quasi-federal structure envisaged in 1950 has consolidated into defined powers of the states.

Under a powerful Centre with a clear majority in Parliament, faultlines in India's federal structure are frequently exposed. Since 2014, when the Narendra Modi government came to power, debates around the 15th Finance Commission, the Goods and Services Tax, the linguistic divide on the National Education Policy, land acquisition, and the proposed All India Judicial Services have all emerged as flashpoints between the strong Centre and states ruled by the Opposition.

Exclusion and ethnic strife: Story of Sri Lanka's citizenship law

NIRUPAMA SUBRAMANIAN
MUMBAI, JANUARY 15

ON DECEMBER 18, a Home Ministry spokesperson seeking to address questions around the new citizenship law wrote on Twitter: "On different occasions special provisions have been made by Government in the past to accommodate the citizenship of foreigners who had to flee to India. E.g. 4.61 lakh Tamils of Indian origin were given Indian citizenship during 1964-2008."

The reference was to the Indian Origin Tamils (IOTs) of Sri Lanka, and the Lal Bahadur Shastri-Sirimavo Bandaranaike Pact of 1964. The statement, though not accurate, highlighted unwittingly the disastrous consequences of exclusionary citizenship legislation enacted by Sri Lanka (then Ceylon) within months of gaining independence in February 1948.

Exclusion of the IOTs

Sri Lanka's November 1948 Citizenship Act was the first in a series of divisive moves by the Sinhala ruling elites to consolidate their political base in the majority Sinhalese (Buddhist and Christian) community. It was aimed at excluding IOTs — then as now, the predominant workforce in the upcountry tea estates — whose numbers and growing association with leftist parties were proving to be politically inconvenient.

The IOTs that India accepted through the 1964 agreement were not "fleeing" Sri Lanka; most were, in fact, reluctant to leave the country in which they had lived for three generations or longer. Those that remained, were stateless in Sri Lanka for decades until their status as citizens was settled through amendments in Sri Lankan law in 1987, 1993, and 2003 — ironically because the ruling party now wanted their votes.

One of the immediate fallouts of the 1948 Act was the formation of SJV Chelvanayakam's Federal Party (Ilankai Tamil Arasu Katchi). Its later avatar, Tamil United Liberation Front, demanded a separate Eelam in 1976 in its famous Vadukoddai Resolution. The rest, as they say, is history.

Political scientist Amita Shastri noted that the Citizenship Act sharply delineated ethnic differences, and distorted the political system to weight it in favour the Sinhalese majority. "This created an intractable dynamic of ethnic outbidding between the two major Sinhalese-dominated parties [the United National Party and the Sri Lanka Freedom Party] to attract Sinhalese [voters] at the expense of the Sri Lankan Tamil minority. This directly contributed to the latter's alienation, support for secessionism, and the outbreak of ethnic violence and civil war in the 1970s and 1980s." ('Estate Tamils, the Ceylon Citizenship Act of 1948 and Sri Lankan Politics' (1999) *Contemporary South Asia*, 8:1, 65-86)

The Indian Origin Tamils

Different from Sri Lankan Tamils who live predominantly in the North and East, the IoTs are descendants of indentured Tamil workers whom the British shipped to the island in the mid 19th century to work on tea estates in the five hill districts of the Central and Uva provinces. These people now call themselves Malayaha (hill country) Tamils — because of the historical stigma attached to being "Indian" Tamils.

At the time of Sri Lanka's independence, the IOTs numbered around 800,000. They were the backbone of the tea industry, politically active, and keen to ensure their rights in independent Sri Lanka through strategic alliances with unions and left parties.

Ahead of independence, Sri Lanka's ruling classes had held fraught discussions with the British on questions of citizenship, franchise, and the rights of minorities. In the 1947 elections to the Ceylon legislature, the IOTs represented by the Ceylon Indian Congress allied with the All Ceylon Tamil Congress (representing the Sri Lankan Tamils) and the left parties. The CIC won 7 seats, helped the left parties win 14, and influenced results in 5 or 6 other seats. The Sinhalese elite-dominated United National Party won 42 out of the 95 seats.

In 1964, Prime Ministers Lal Bahadur Shastri and Sirimavo Bandaranaike signed and agreement on giving citizenship to Indian Origin Tamils. *Express Archive*

Determined to blunt their political clout, the UNP described IOTs as "birds of passage" with no loyalty to the country, as India's fifth column in Sri Lanka, and as people who stole the locals' jobs. Sri Lanka's first Prime Minister D S Senanayake rushed the Citizenship Act through the legislature just seven months after independence.

The Citizenship Act

Under the Act, citizenship could be only by patrilineal descent or registration. For citizenship by registration, umarried persons had to show 10 years of uninterrupted stay in Sri Lanka from the date of application; married persons had to show 7 years. Most IOTs were unlettered and poor, with no documents. Effectively an entire community was rendered stateless.

Soon afterward came the Indian & Pakistani Residents' Act of 1949, which opened a window for those above a certain income level.

Finally, the 1949 Ceylon (Parliamentary Elections) Amendment was passed, under which only citizens could vote. The IOTs were stripped of voting rights, and the fallout was immediate: in 1947, there were 7 Indian Tamils in the legislature; in 1952, there were none.

The Citizenship Act triggered panic similar to that seen in Assam during the National Register of Citizens (NRC) process. By August 5, 1951, when the two-year deadline for applications for citizenship ended, 2,37,000 applications had been filed, covering most of the 8,24,430 Indian Tamils. By 1964, with the natural increase in population, the number of stateless IOTs reached nearly 10 lakh. Only 1,40,000 had been granted citizenship under the Indian & Pakistani Residents' Act, and 2,50,000 were accepted by India as its citizens.

India-Sri Lanka relations

The treatment of Indian Tamils had cast a shadow on India-Sri Lanka relations even before independence; post-independence, the citizenship laws became a major irritant. They were denounced in India, and the Madras legislature passed a resolution against them. In 1947, Prime Minister Jawaharlal Nehru had tried unsuccessfully to persuade Senanayake to give citizenship to all Indian Tamils who had lived in the country for 7 years prior to January 1, 1948. The two countries corresponded on this issue until Nehru's death in 1964. Nehru rejected the Sri Lankan position that the "stateless" IOTs were automatically Indian citizens, and would have to be shipped to India.

After the 1962 war with China, Prime Minister Shastri was eager to mend fences with Sri Lanka. He gave in to Bandaranaike's demands, and it was agreed that Sri Lanka would accept 3,00,000 IOTs and their natural increase, while India would accept 5,25,000 IOTs and their natural increase. The status of the balance 1,50,000 IOTs was to be decided later.

Some 4,00,000 reluctantly applied for citizenship of India; 6,30,000 applied for Sri Lanka's. By the time the window agreed upon in 1964 closed, only 1,62,000 IOTs had been given Sri Lankan citizenship. In the same period, India gave citizenship to over 3,50,000.

Sinhala-Tamil tensions

Majoritarianism had by then taken firm root in Sri Lanka's politics. In 1956, SWRD Bandaranaike, who had broken from the UNP to form the Sri Lanka Freedom Party in 1951, became Prime Minister on the Sinhala Only plank, which then became the Official Language Act. There were protests by Tamils, and Chelvanayakam's Federal Party demanded a new federal constitution with autonomy for the Tamil dominated north and east, and the scrapping of the Citizenship Act. The 1957 "Banda-Chelva agreement" followed, which the UNP opposed strongly. Ethnic riots broke out, and SWRD tore up the agreement.

But the ethnic crisis was now out of control. In the coming decades it would morph into the LTTE's bloody war for independence. By the time the war came to its terrible end in 2009, tens of thousands of Tamil civilians had been killed, and both Tamils and Sinhalas had suffered irreparably.

As for the IOTs, as the two major Sinhala parties came to realise the value of the chunk of their votes, substantive changes were made to the law in 1993 and 2003 to absorb them as citizens of the country.

The decades-long absence of political representation, however, led to the complete exclusion of Indian Tamils from the Sri Lankan national imagination. The community became poorer, lacking access to education, better living and work conditions. Until almost the end of the 20th century, they had the worst human development indices of any ethnic community in Sri Lanka. Small improvements have been registered since.

WORDLY WISE

AN OLD PALEONTOLOGICAL JOKE PROCLAIMS THAT MAMMALIAN EVOLUTION IS A TALE TOLD BY TEETH MATING TO PRODUCE ALTERED DESCENDANT TEETH.

— STEPHEN JAY GOULD

The Indian EXPRESS

FOUNDED BY RAMNATH GOENKA

BECAUSE THE TRUTH INVOLVES US ALL

SLOW CONNECTION

Government is responding to SC ruling, but it appears slow and reluctant in restoring fundamental rights

IN RESPONSE TO a Supreme Court ruling last week, the central government is restoring broadband connections to government installations and providers of essential services, hospitals, banks and the tourism sector in Jammu and Kashmir. However, the step falls far short of the complete withdrawal of curbs on public communications which the court had sought. ISPs are required to block social media sites and technology by which such a restriction can be bypassed, before providing access to institutions and essential service providers. Institutions and offices must monitor internet usage, record users and change access credentials every day. A call will be taken on fully opening up mobile data communications after the Republic Day celebrations, the government says. This is far too tentative, considering the spectrum of fundamental rights that have been violated by the internet shutdown in Jammu and Kashmir, which is the longest ever in a democracy.

Last week, responding to petitions by Kashmir Times executive editor Anuradha Bhasin and Congressman Ghulam Nabi Azad, the Supreme Court had ruled that the internet shutdown was in violation of Article 19(1)(a) and Article 19(1)(g), which confer the freedom of speech and expression, and the freedom to practise any profession or occupation, and to operate a business, anywhere in the territory of India. Any curb on public freedoms instituted by the government must be constitutional and proportionate. The internet shutdown fails on the question of proportionality because it is of unspecified duration. Communications may be restricted for very short periods in the interest of public safety but here, there is an absence of a declared cut-off date. Moreover, this shutdown has demonstrated, like never before, that the internet has become the backbone of normal life. Not only has the suspension of data services curtailed the freedom of speech, it has also exacted business losses in the range of Rs 18,000 crore, according to the Kashmir Chamber of Commerce and Industries, which had welcomed the SC ruling as an opportunity to seek compensation. In addition, commonplace actions like seeking medical advice and filing examination and job applications had become impossible or extraordinarily difficult.

The SC ruling was forward-looking, placing all communications shutdowns under the watch of the court. Judicial oversight would encourage governments to be less arbitrary in the future, for they would have to pass the proportionality test. The inevitability of large compensation claims, in the event of failing the test, would serve as a material deterrent. In the present case, in J&K, the government should try to comply with more alacrity because fundamental rights are at stake.

POWER REPLAY

With UDAY failing to engineer a turnaround in discom finances, government needs to rework incentive structures

ALMOST FIVE YEARS after the launch of the Ujwal DISCOM Assurance Yojana (UDAY), there are indications that the power sector is once again in trouble. Not only have losses of state-owned distribution companies (discoms) risen, but their dues for power purchases have also surged. At the end of November 2019, dues owed by discoms to power producers, both independent and state-run entities, stood at Rs 80,930 crore. Of these, Rs 71,673 crore extend beyond the allowed grace period of 60 days. Rajasthan leads the states with the most dues, followed by Tamil Nadu and Uttar Pradesh. These numbers suggest that, contrary to expectations, the UDAY scheme has failed to engineer a sustainable turnaround in the fortunes of the beleaguered distribution segment — the weakest link in the power chain. Reportedly, the Centre is contemplating yet another scheme to address the issues that continue to plague the sector. But, as distribution falls under the purview of states, rather than adopting an approach similar to that of the past schemes, the new scheme should focus on altering the incentive structure at the state level so as to ensure the achievement of targets.

The UDAY scheme, which involved state governments taking over the debt of discoms, had three critical components: A reduction in the aggregate technical and commercial (AT&C) losses, timely revision of tariffs, and elimination of the gap between average per unit of cost and revenue realised. While progress has been made on some of these fronts, it hasn't been in line with the targets laid out under UDAY. AT&C losses have declined in some states, but not to the extent envisaged. Under UDAY, discoms were to bring down AT&C losses to 15 per cent by FY19. Similarly, while some states have raised power tariffs, the hikes have not been sufficient as political considerations prevailed over commercial decisions. As a result, the gap between the average cost per unit of power and the revenue realised has not declined in the manner envisaged, forcing discoms to reduce their power purchases and delay payments to power producers. This in turn has impaired the ability of power generating companies to service their debt, causing stress to the banking sector.

The new plan, reportedly, aims to address these issues by reducing electricity losses, eliminating the tariff gap, smart metering, privatising discoms, and having distribution franchisees. These would be welcome measures. But, along with these, the Centre should also look at altering the incentive structures of states in order to ensure compliance. Stiff penalties need to be imposed for not meeting the targets laid out in the new scheme.

TAKE CARE, DIEGO

As the giant tortoise hangs his boots, a poster boy of conservation, spare a thought for his less celebrated colleague

IN 1976, WHEN Diego landed on the Galapagos islands, his fellow Espanola giant tortoises faced extinction. There were just 14 of his kind in the wild, 12 of them female. In a little more than 40 years, Diego sired more than 800 Espanalo tortoises and, along with his mates, helped mitigate the crisis of his species. Galapagos today is home to more than 2,000 Espanola tortoises. And Diego can now retire from the island's captive breeding programme, a poster boy of conservation.

In the mid-20th century Galapagos's giant tortoises were hunted by sailors and whalers for food. The sailors also introduced goats to the islands that depleted cacti — food, water and shade for the giant tortoise. When Diego was brought in from a zoo in San Diego, the ecological integrity of the islands was threatened. Not much is known about his pre-Galapagos life. Estimates about his age vary. One thing we do know for sure: His sojourn at Galapagos established Diego as unique to his species. The Espanol tortoise is known to be shy and reserved. Diego, however, wasn't just a playboy. There are accounts aplenty of the long-necked, yellow faced tortoise looking warmly at tourists. A fundamental tenet of evolution is that adaptability holds the key to species survival. At Galapagos, Charles Darwin's famous observatory, Diego seems to have vindicated the sage of evolution.

There are worries that with limited genes, the Espanol tortoise's revival could be cut short. But nature lovers need not worry. They could, instead, spare a thought for Diego's colleague at the breeding programme, known by the nondescript moniker, E 5. According to gene tests, the less flamboyant creature, who is also going into retirement, has fathered nearly twice as many giant tortoises as Diego. Species survival — indeed the domain of evolution — is not always about charisma. For every Darwin there is a less-celebrated Alfred Russel Wallace — for every Diego, there is an E 5.

Reset and refocus

Impression that government prioritises non-economic agenda over development must be addressed

AMARTYA LAHIRI

INDIA IS NOW well and truly in the middle of a socio-economic upheaval. The economy has been weakening for a couple of years now. The social upheaval is new but its seeds have been fermenting for a while. The danger here is that the social and economic sides of an economy are not divorced from each other. Each influences the other and the current quagmire threatens to unleash the worst type of feedback between the two.

The most dangerous smouldering ember that could erupt due to the interaction between the social and economic sides is unemployment. The rising unemployment in the country has been commented upon widely. Less noted is the fact that rising unemployment disproportionately affects the young. Misfiring European economies like Spain, Greece and others routinely report youth unemployment rates above 25 per cent. This is a social tinder box for a country like India whose median citizen is in the 30s and which is thrusting 10 million new young people to the job market every year. This dynamic, popularly hailed as India's demographic dividend, can rapidly turn into a demographic curse if the employment situation doesn't improve. A massive pool of unemployed youth makes for a huge collection of unhappy people, running high on testosterone and anger, looking to vent.

Along with this volatile pre-existing cocktail, we now have the addition of the state strong-arming youth protesters across the country. Each violent police action begets more resentment, protests, and additions to the ranks of protesters. Unemployed youth are fodder in these situations for all sides. The young can provide volume, sound and muscle with relatively little concern for self in normal times. Lack of attractive opportunities makes this risk-taking trait more acute. Self-preservation is a predilection that affects the middle-aged more since they have more to protect.

So where will the jobs come from? The job creators are entrepreneurs, conglomerates and multinationals. It is in their nature to take investment risks as long as the returns are high enough. Investment rates in India fell well below 30 per cent a while back. Clearly, the returns were not compensating entrepreneurs for the risk. The recent social upheaval is only adding to the perceived risk. It can only be dissuading more fence-sitters from investing in the economy until the uncertainty ebbs and the situation calms down. But the more investors adopt a "wait-and-see" approach, the worse the job situation will become. The worse the job situation becomes, the greater will be the ranks of the angry youth. This has all the makings of a devastating feedback loop. For the sceptical, the examples of Brazil (28 per cent youth unemployment) and South Africa (58 per cent youth unemployment) should be salutary examples of emerging economies descending into crime, violence and crisis due to failing to productively (and respectfully) engage their youth.

So where will the jobs come from? The job creators are entrepreneurs, conglomerates and multinationals. It is in their nature to take investment risks as long as the returns are high enough. Investment rates in India fell well below 30 per cent a while back. Clearly, the returns were not compensating entrepreneurs for the risk. The recent social upheaval is only adding to the perceived risk. It can only be dissuading more fence-sitters from investing in the economy until the uncertainty ebbs and the situation calms down. But the more investors adopt a "wait-and-see" approach, the worse the job situation will become. The worse the job situation becomes, the greater will be the ranks of the angry youth.

The government's focus on the economy is unclear. Through its personnel decisions in the past few years, the central government has signaled its low priority on economic management. The position of Deputy Governor (Monetary Policy) of the RBI lay vacant since July 2019 when Viral Acharya resigned. Despite the fact that he announced his decision to resign back in May 2019, the government only filled the vacancy this week. In the interim, the Monetary Policy Committee was operating without a key technical specialist for seven months. A previous vacancy for Deputy Governor of the RBI also remained unfilled for 11 months before MK Jain was appointed in June 2018.

This is particularly debilitating for the RBI because the government replaced Governor Urjit Patel with someone whose domain competence does not lie in either banking or finance or markets or macroeconomics or monetary economics. To compound matters, the government has chosen as economic advisors two people whose domain specialisation is in markets, banking and finance. They would be far better used in the RBI rather than the ministry of finance, which requires trained macroeconomists.

The choice of personnel in key ministries has been equally confusing. In the latest garnish to this soup of confusion, the prime minister was accompanied by the home minister during pre-budget consultations about the state of the economy with industrialists and economists. Strangely, the finance minister was not included in these deliberations.

The overarching impression all of this has given is that the government has prioritised its non-economic agenda over the development agenda. This has become more glaring over the last 18 months when the government started running out of the low oil price largesse that financed its welfare spending till 2017. Without the fiscal room for more spending and the political will to enact labour and land reforms, the government seems out of ideas. Its only proactive moves appear to be retrograde ones such as raising import duties. More damagingly, it is seen as trying to control the message by refusing to release data. This just makes things worse because people assume the worst.

A few changes are needed immediately. The government needs to announce a clear plan and timeline for structural reforms. Alongside, it has to start staffing technical positions by prioritising domain competence and empowering these hires with policy relevance. Importantly, it needs to pledge its commitment to the integrity of institutions tasked with the regulation of corporations and banks, monetary policy management, data collection/dissemination and law enforcement.

The government also needs to desist from trying to drown out protesting voices with state muscle power. Protests serve as a pressure cooker valve. They preserve order by allowing people to vent. Hope goes a long way, especially for the young. A climbdown from the arrogance of power would be a good way of generating hope.

The writer is Royal Bank Research Professor of Economics, University of British Columbia

GOVERN, NOT CONQUER

Using force to suppress the 'Other' cannot lead to peace

DEV ATHAWALE

IN THE ARTICLE, 'Discrimination, not justice', (IE, December 19, 2019), Pratap Bhanu Mehta, writes about "arguably, the largest student protest since the Emergency". In the context of the failure of our governing institutions, the role of students in seeking to restore our constitutional framework is striking. On the other hand, the political class does not seem to be worried, while pursuing policies that would undermine the very structure of our constitutional democracy.

As we seek to restore our torn social fabric, and promote both democracy and pluralism, some clues from the past may be useful. In the years before Independence, the failure of the leadership — of the Congress and the Muslim League — to arrive at an honourable compact had tragic consequences. The League saw the Congress as promoting Hindu hegemony; the Congress dismissed the League as a bunch of intransigent Muslims. The result was the Partition of India, which resulted in loss of lives and property to the tune of thousands of crores. It also created a bitter, enduring enmity between communities.

But, despite Partition, millions of Muslims stayed behind in India, taking at face value the promises of the Indian Constitution — that they would enjoy equal rights of citizenship. How can we redeem those promises now?

It is here that the past may help. While the political debate on Partition has focused on what the Congress and the League did (or did not do) in the years just before 1947, if we go slightly further back in time, we can discover voices of sanity that speak directly to our troubled present. These voices can serve the present generation to remind them of the wrongs engulfing them. Here, we would be reading history not to compete with the present, but to find meaningful solutions for the future.

The suspicions of the present day ruling class with regard to the integrity of Muslims are deeply worrying. These are Indians who did not cross over to Pakistan, during Partition, believing that they would be treated honorably, with secure futures. The government's perceived hostility towards them, so as to relegate them to second-rate citizens or an appendage of Hindus, is unfathomable.

In particular, I draw the reader's attention to the deliberations at the First Round Table Conference, held in London in November 1930. The conference had 89 representatives: 16 British officials, 57 delegates from British India, and 16 from the Princely States. Although the Congress had boycotted the conference, it nonetheless saw the participation of liberal Hindus like Tej Bahdur Sapru, V S Srinavasa Sastri, M R Jaykar and C Y Chintamani, as well as prominent Muslim leaders, like Aga Khan, Sir Mohmmad Shafi, Mohammad Ali, A K Fazl-ul-Huq and M A Jinnah.

In *The Constitutional Problem in India*, Sir Reginald Coupland has given a vivid account of the discussions in the conference. Sapru's remarks are especially worth quoting: "It has been an article of faith with me, that no constitution has any chance of success in India unless the minorities are fully satisfied, that they have got the position of honourable safety in the new commonwealth which we are seeking to establish". But, "the heart of youth of India on the question", Sapru went on, "is absolutely sound", and sooner or later a sense of "territorial patriotism" must grow among them. It would grow, added Jaykar, if the communities were given a chance of serving India together. "Give them opportunities of feeling that side by side they are working for their one country... and a great deal of the difficulty will disappear". (Coupland, pp 120-121).

These words are highly pertinent for India today. For, what do different enactments like the anti-conversion Act, anti-beef Acts, the criminalising of triple talaq, the abrogation of Article 370, and, the introduction of NRC and CAA, mean to Indian Muslims today? Will this satisfy Muslims or dismay them? Do they feel they are treated honourably and enjoy security in the country of their choice after Partition? Do they have reason to be proud of "territorial patriotism"? Do we allow them to grow as such? Do we give them opportunities to work for their one country?

The suspicions of the present day ruling class with regard to the integrity of Muslims are deeply worrying. These are Indians who did not cross over to Pakistan, during Partition, believing that they would be treated honourably, with secure futures. The government's perceived hostility towards them, so as to relegate them to second-rate citizens or an appendage of Hindus, is unfathomable.

The writer is a retired public servant based in Pune


INDIAN EXPRESS

Madhya Pradesh CM, Janata chief resign

JANUARY 16, 1980, FORTY YEARS AGO

MP CM RESIGNS

THE CHIEF MINISTER of Madhya Pradesh, V K Sakhlecha, and the state Janata Party chief, Kushabhau Thakre, have resigned their posts owning "moral responsibility" for the party's debacle in the Lok Sabha poll. Their resignation letters were handed over to the party chief, Chandra Shekhar, in New Delhi.

CHARGES DROPPED

THE SPECIAL COURT of justice, M L Jain dropped proceedings against Mrs Indira Gandhi and two of her aides in the Maruti case, stating it had no jurisdiction. In the judgement, Jain found untenable the manner of the transfer of the case from the chief metropolitan magistrate's court of Delhi as also the allocation by the Union government of the jurisdiction to the special court to try this case. By another ruling, Jain also withdrew proceedings in the case relating to the arrest of the late Bhimsen Sachar and seven other freedom fighters (who had written to the then prime minister protesting against the imposition of Emergency).

NOT ENOUGH OXYGEN

SERIOUSLY SICK PATIENTS needing urgent surgery for survival are spending sleepless nights. There is an acute shortage of oxygen and other medical gases in hospitals across the country, and, in most of Delhi's major hospitals only very serious patients are being taken up for operations. Routine surgery, what is called "cold operations" in medical parlance has been dropped altogether in many hospitals. The result is, some of the private nursing homes in the city are doing a roaring business.

WARNING THE SOVIETS

PAKISTAN PRESIDENT GENERAL Zia-ul-Haq warned against spreading Soviet influence in South Central Asia and the Persian Gulf following Soviet military intervention to Afghanistan. He also implied that Pakistani troops would fire on Soviet troops if they cross the Afghanistan-Pakistan border in pursuit of Afghan rebels.

WHAT THE OTHERS SAY

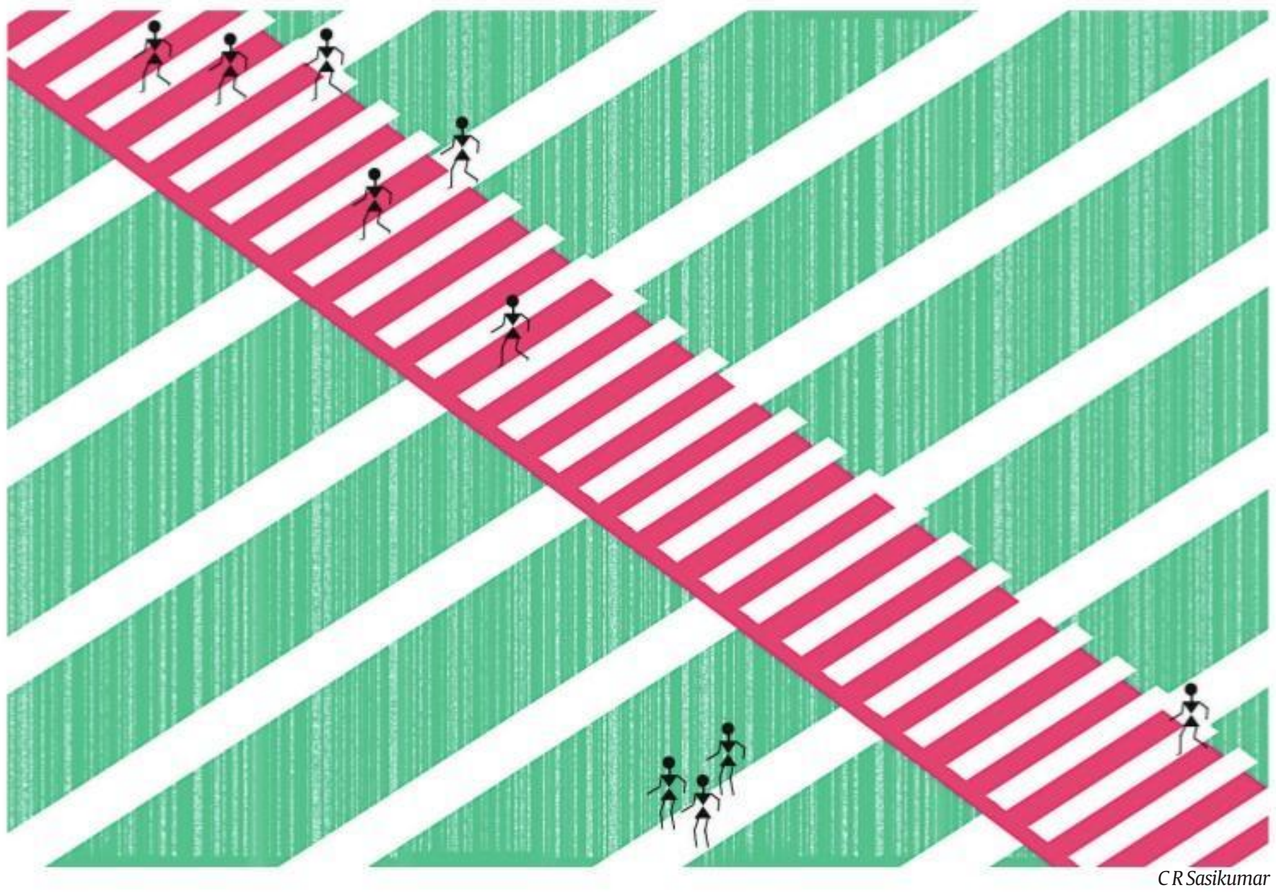
"It is perhaps a liberal conceit to suggest that class has vanished from modern societies which claim to be purely meritocratic, with the only barriers to upward mobility being the overt and institutionalised forms of discrimination."

— THE GUARDIAN

Don't call them anti-national

Non-violent protests are the most democratic form of political engagement. They demonstrate that the youth of India are deeply committed to the fundamental values of constitutionalism

C RAJ KUMAR



C R Sasikumar

INDIA IS FACING a significant challenge that will test its commitment to constitutionalism and democratic values. Parliament recently passed the Citizenship Amendment Act (CAA) that has raised important constitutional questions. However, what is at stake is more than just the constitutionality of the Act.

The CAA provides that migrants from certain communities will not be treated as "illegal migrants" for the purposes of the Passport Act and the Foreigners Act, if they meet four criteria: One, they came to India before December 31, 2014; two, the central government has exempted them from the Passports and Foreigners Acts; three, they are from Afghanistan, Bangladesh or Pakistan, and; four, they belong to any one of the six religious communities, Hindus, Sikhs, Christians, Parsis, Jains or Buddhists. As per the information of the government of India, only about 31,313 people fulfil the above four criteria and have stated, when they first entered India, that they had come to the country to escape religious persecution. Only these people will actually benefit from this law.

But the CAA might not pass constitutional scrutiny because of the following reasons. One, there is no intelligible differentia. The CAA identifies persons belonging to six religious communities and privileges them over other religions — especially Islam. This doesn't qualify the test of reasonable classification and the law will not pass constitutional scrutiny, having specifically left out Muslims. It is an example of discrimination — the grant of citizenship on the basis of religion was rejected by the framers of the Constitution.

Two, the classification doesn't have a rational relation to the object. The classification in the Act has been ostensibly done to provide the privilege of citizenship to those who have been affected by religious persecution. But both the selection of the countries and the inclusion of religions do not have a rational relationship with this objective. There is enough evidence to prove that there are people practising other religions, who suffer from religious persecution in these three countries as well as in other countries in South Asia. In fact, addressing the problem of religious persecution would have been a legitimate criterion for legislation — instead of using a particular religion or country of origin as the basis of granting citizenship.

Three, arbitrariness is antithetical to equality. Article 14 of the Constitution provides for "equality before law or equal protection of the laws within the territory of India". The Supreme Court has emphasised the importance of non-arbitrariness to pass the test of equality. In this case, the selection of the countries, the identification of the religions and more importantly the selective exclusion of Muslims, is a clear violation of Article 14 . Numerous judgments of the Supreme Court have underscored this and the Court has been unequivocal in its commitment to the jurisprudential foundations of this principle.

Four, the CAA violates the basic structure of the Constitution. An important doctrine of Indian constitutional law is that the basic structure of the Constitution is unamendable. The power of Parliament to amend any provision of the Constitution and to pass any legislation is plenary, provided the basic structure and framework of the Constitution is not altered. In short, no amendment to the Constitution can change India from being a Republic. Over the years, the Supreme Court has listed what it regards as part of the Constitution's basic structure and framework, including its power of judicial review, federalism and secularism. The doctrine of unamendability of the Constitution's basic structure has now entrenched fundamental values of constitutionalism by imposing limits on the sovereign power of Parliament. The CAA, by omitting Islam, violates the principle of secularism, which the Court has held is part of the basic structure of the Constitution.

While these are four good reasons for the CAA to be declared unconstitutional, there are other reasons as to why this was unnecessary and unwarranted. First, the CAA has undermined the concept of federalism. Given that the Act needs to be implemented by the state governments, and several chief ministers have expressed their disapproval, effectively implementing this law will be difficult. The Kerala legislative assembly has, in fact, passed a resolution to this effect.

Second, the CAA has affected the collective consciousness of the Indian identity. While, globally, identity politics is nothing new, India has steadfastly adhered to the values of pluralism. But the CAA, in its existing form, places religious identity over other identities for granting citizenship — that needs to be rejected.

Finally, the non-violent opposition to the Act is part of our democratic culture. Most of the protests and the opposition to the CAA have been non-violent, democratic, inclusive and pluralistic. The violence that has happened on account of the protests is unacceptable in any democratic society, committed to the rule of law. It is a huge mistake to dismiss the opposition to the Act as anti-national or anti-Hindu or anti-democratic.

The resistance across the country, particularly among the youth and the students across university campuses is motivated by a deep commitment to constitutionalism and democratic values. It has even been largely devoid of participation by political parties. In fact, non-violent protests are the most democratic form of political engagement and this demonstrates the fact that the youth of India are deeply committed to the fundamental values of constitutionalism and democratic governance.

So, what is the way forward? There is a strong case for the CAA to be declared unconstitutional by the Supreme Court. This outcome can be avoided, if Parliament revisits the Act and includes all religions and the beliefs of India's tribal population who are animists and do not adhere to any of the major faiths in the country. Doing this will send the right message to all citizens across India, including some 200 million Muslims and some 104 million tribals, that it was never the intention of the government to discriminate against anyone on the basis of religion, faith or belief.

The writer is founding vice chancellor of O P Jindal Global University and founding dean of Jindal Global Law School

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Abdication, not deferral

Court showed inertia in case of communication lockdown in Kashmir. If government takes its cue from SC, damage could be irreversible

CHINTAN CHANDRACHUD

ON JANUARY 10, the Supreme Court delivered a judgment in a case challenging what is now widely known as the "communications lockdown" in Jammu and Kashmir. On August 4, 2019, mobile phone networks, internet connectivity and landlines were disabled in large parts of the state, in anticipation of the monumental constitutional changes that would follow. This was coupled with restrictions on physical movement in several areas with political leaders of the region also being placed under house arrest.

The lockdown comprised two legal components: The first being orders under the temporary suspension of telecom services rules (suspension rules), which enables the central or state government to suspend telecom services when there is a public emergency or a risk to public safety. The suspension rules establish a modest review mechanism, requiring a three-member committee of bureaucrats to meet once, within five days, to determine whether a suspension order is appropriate. The second component included orders made under Section 144 of the Criminal Procedure Code, which enables magistrates to restrict physical movement in an area in the interest of public safety.

In deciding this case, the Supreme Court would have been expected to undertake three tasks. The first was to expound upon the relevant rules and principles. In this case, the constitutional and statutory provisions — the suspension rules and Section 144. The Court's second task was to determine, based on its conclusions, whether the orders made under the suspension rules and Section 144 were valid or invalid. The Court's final task was to determine what to do if any of the orders were invalid — this would typically entail the Court setting aside the orders, resulting in them ceasing to have legal effect.

The Supreme Court performed its first task in a robust way, arriving at a series of significant findings. The Court held that the right to freedom of speech and freedom of trade through the medium of internet were constitutionally protected, implying that only constitutionally authorised limitations on those rights were acceptable. Any orders made under the suspension rules would need to be published, even though the rules did not require publication. A single round of review of suspension orders by the review committee would not suffice. Rather, a periodic review would need to be undertaken every seven working days to assess whether the suspension order remained appropriate or not. The Court also held that Section 144 orders should be published and be accompanied with reasons, enabling citizens to meaningfully challenge them in the courts.

However, after expounding upon the relevant principles in this way, the Court abandoned its tasks of deciding whether the suspension orders and Section 144 orders were valid or invalid, and what consequences would follow. The 130-page judgment yields no decision on the most important issue before the Court — whether various components of the communications lockdown were invalid and should be set aside.

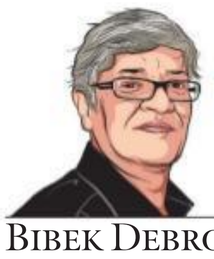
Why did the Court decide not to decide? Two reasons can be inferred from its judgment. First, the status of the communications lockdown, and the orders in place that put it into effect, evolved during the course of the proceedings. The Court was not apprised about precisely which orders were in place, for what period and when. While the Court lamented the government's failure to produce these orders, it did not take the logical next step of directing the government to produce them.

Second, the Court envisaged that the government should have the first opportunity of testing the constitutionality of the lockdown following its decision. For example, a review committee would need to convene within seven working days to determine which suspension orders should remain intact and which of them should be withdrawn, based on the principles in the Court's judgment.

At first glance, this approach seems perfectly sensible. All governments need to be put to the test of thinking carefully about the constitutionality of their own orders before the Court does so. The trouble in this case is that inertia is highly prejudicial — it has taken the Court five months to hear and decide on the challenge to the communications lockdown. If the government now fails to comply with the principles set out in the Court's judgment, will it take another five months for the issue to be decided? By that stage, the damage would already have been done, and it would be impossible to turn the clock back to award 10 months of freedom to the millions affected.

It is also puzzling that the Court chose to dismiss the petitions rather than keep them pending to monitor the government's compliance with its directions. The Court has deployed the strategy of keeping petitions pending in dozens of other cases that pale in significance compared to this one — from the running of the cricket board to red beacon lights on cars. The inevitable conclusion is that the Court's decision not to decide on the validity of the orders giving effect to the lockdown is not just deferral — it is abdication.

Chandrachud is the author of The Cases that India Forgot. *Views are personal*



One railway

Silos in railway services have to be broken, though it's a complicated task

BIBEK DEBROY

TODAY, THERE IS an alphabet soup of services in Indian Railways (IR) — IRPS (Indian Railway Personnel Service), IRTS (Indian Railway Traffic Service), IRSS (Indian Railway Stores Service), IRSME (Indian Railway Service of Mechanical Engineers), IRSEE (Indian Railway Service of Electrical Engineers), IRSSE (Indian Railway Service of Signal Engineers), IRSE (Indian Railway Service of Engineers) and IRAS (Indian Railway Accounts Service). There are eight Group A services. Five — IRSME, IRSEE, IRSSE, IRSS and IRSE — are so-called technical services, recruited through an engineering service examination conducted by UPSC. Three — IRPS, IRTS and IRAS — are non-technical, recruited through the civil service examination conducted by the UPSC.

There are 8,401 officers in the Railways, not evenly distributed across the eight services. The IRSE has 1,958 officers, IRSME 1,349, IRTS 1,099, IRSEE 1,074, IRSSE 971, IRAS 822, IRSS 650 and IRPS 478 officers. Departmentalism and functioning in silos are not caused by this alphabet soup of eight services alone, but multiple services certainly contributes. Unification has been recommended by several committees — Prakash Tandon Committee (1994), Khanna Committee (1998), Rakesh Mohan Committee (2001), Sam Pitroda Committee (2012) and Bibek Debroy committee (2015). The Prakash Tandon Committee recommended a single service. The Gupta-Narain Committee (1994), set up to examine feasibility of implementing this single service idea, questioned whether this could be done.

The Debroy Committee found that the reservations of the Gupta-Narain Committee were unwarranted. It recommended two distinct services, technical versus non-technical, if there were two separate modes of entry, resulting in a non-homogeneous group of officers. But in a presentation to the committee, the FROA (Federation of Railway Officers' Associations) argued for a single service and entry examination, and suggested a method that could be used. "The Railway Board will place an indent on UPSC specifying the number of recruits needed for each discipline such as civil/mechanical/electrical engineers or simple graduates in any subject... After selection of pre-decided numbers from each specialisation/general subjects, they will be merged into a single IRLS (Indian Railway Service) by UPSC itself through a pre-decided formula of inter-se seniority." This is akin to what happens with the Indian Foreign Service, and there can be a new examination conducted by the UPSC.

An Indian Railway Management Service (IRMS) has now been announced (IRLS of the quote becomes IRMS), breaking down departmentalism and silos. For new entrants, IRMS constitutes no great problem. The details will be worked out between the IR, UPSC and DOPT. But the FROA's suggestion, incorporated into Debroy Committee's Report, suggests one way of doing this. Nor is there any great issue with vertical mobility of IRMS. To cite one method, there can be a bifurcation mid-career, say in the 14th year of service. Irrespective of educational background, officers can opt for a general management cadre and aspire to be members of the board, even the CRB. With an engineering background, officers can aspire to become GMs. With parity between GMs and members, this becomes a conscious career choice. In any event, the further up one moves on the ladder, the importance of functional specialisation, vis-a-vis management skills, declines.

The knottier problem is that of retrospectively integrating those 8,401 officers into the IRMS. Note that, with decentralisation, the Railway Board has been pruned and if vertical mobility is interpreted as a position in the Rail Bhawan, that opportunity is limited, irrespective of whether the IRMS is constituted or not. Since posts have historically been reserved for specific services, vertical mobility has been uneven across those eight services. For instance, consider promotion to the higher administrative grade (HAG). IRTS, IRAS and IRPS have moved up the most (1987 batch promoted), while IRSME, IRSEE and IRSS have lagged (1985 batch promoted) behind. Posts becoming ex-cadre (no longer reserved for specific services) increases a sense of insecurity, especially because the average entrant through the present civil service examination is older than the average entrant through the present engineering service examination. Reservation for specific services is inherently inefficient. Therefore, despite retrospective integration being a knotty issue, making posts ex-cadre should be welcomed. The Debroy Committee suggested two methods for retrospective integration. Let me quote one of these. "This methodology involves interpolation of officers of various services in a combined list, arranged in proportion to total strength of each service. The service with the largest number of officers will form the base. At the top of the combined list, toppers of all services will be placed in order of their date of birth — those born earlier being assigned higher seniority. Thereafter, officers of various services will be interpolated in between the officers of the base service in the ratio of the number of officers in that service vis-à-vis the number of officers in the base service."

This sounds complicated and yes, it is a complicated exercise, irrespective of which method is used. We will have to wait to see what method is evolved by the Group of Secretaries, IR, DOPT and UPSC. There is a phenomenon one can't get away from and this has nothing to do with engineers performing a core function in the IR. Engineers qualify for civil service examinations at an average age lower than that of other aspirants. This may be one reason why there is such a high percentage of engineers within something like the IAS (even MBA programmes). There will be a high percentage of engineers in IRMS too, though there will be an "indent" for those with non-engineering backgrounds. But because engineers will be younger, they will be promoted faster, irrespective of the method used.

The author is Chairman, Economic Advisory Council to the PM. Views are personal

LETTERS TO THE EDITOR

UN-LEARNING

THIS REFERS TO the editorial, 'Before school' (IE, January 15). The aganwadi centres are in a dilapidated state and ill-equipped. Therefore, they are not able to serve their intended objective. What can one expect if the local custodians of these centres are themselves not in good shape? These symbolic centres are being run just as a routine compliance to the government schemes without worrying in the least bit about the outcome of it. Our media only zeroes in on the functioning of elite institutes such as JNU etc, when it needs to bring into focus, instead, the stories of such crucial institutions and make the government more accountable.

Deepak Singhal, *Chennai*

THIS REFERS TO the editorial, "Before school" (IE, January 15). The Annual Status of Education Report 2018 has collected data from 596 districts by surveying 546,527 students from 354,944 homes. The quality of education has a direct bearing on any economy. With nearly 20 per cent of the Indian population in school, their quality of learning, or the lack of it, assumes significance for the competitiveness of the country. A quantum jump in the education sector is the need of the hour. The government and civil society needs to focus on three aspects — a bigger spending on education, maybe 6 per cent of GDP instead of the present 2.7 per cent, political willingness to improve education, and, a drastic change in the quality of teacher education.

Sanjay Chopra, *Mohali*

LETTER OF THE WEEK AWARD

To encourage quality reader intervention, The Indian Express offers the Letter of the Week award. The letter adjudged the best for the week is published every Saturday. Letters may be e-mailed to editpage@expressindia.com or sent to The Indian Express, B-1/B, Sector 10, Noida-UP 201301.

THE RIGHT PRICE

THIS REFERS TO the editorial, 'The cost of subsidy' (IE, January 14). Aiming at greater efficiency, the present government, during its first stint, made several ambitious efforts to unbundle the Food Corporation of India — the country's principle procurement agency's — operations. But none of those initiatives could see the light of day. It is also worthwhile to mention that, recently, the authorised capital of FCI has seen a phenomenal hike from Rs 3,500 crore to Rs 10,000 crore, exemplifying its relevance in the present context. However, apart from rationalisation of subsidies through DBT, crop diversification — with a greater focus on pulses cultivation — is the need of the hour.

Satish Reddy Kanaganti, *Nalgonda*