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FOUNDED BY RAMNATH GOENKA

BECAUSE THE TRUTH INVOLVES US ALL

The human face of law

A mercy petition allows for rectifying miscarriage of justice, mitigates errors in the legal system



PRATIKSHA BAXI

THE SUPREME COURT'S decision to uphold the death sentence of the four men found guilty of the gangrape and torture of a 23-year-old physiotherapist in a moving bus in Delhi — which led to an excruciatingly painful death in December 2012 — is making headlines yet again. This time it is the date of the execution that is making news.

The debate on whether or not death penalty is a deterrent for rape has been overshadowed by a ghoulis fascination with the technology to execute the punishment. In anticipation of the execution of the four men, the media has lamented the lack of executioners and bemoaned the fact that the Tihar jail has had to borrow an executioner. The architecture of the scaffold has been described in forensic detail — the idea of the simultaneous hanging of four men on a scaffold, especially constructed for them, produces nervous excitement. And, the delay is seen as irritating, as if the hangings would satiate the public thirst for vengeance. Justice is conflated with vengeance and the public gaze is fixated on the gallows.

The judiciary, abashed by the accusations of delay, has turned the blame on the Tihar bureaucracy. And the Tihar bureaucracy inches towards the gallows by moving the death row convicts to Jail Number Three, where the hanging will reportedly take place. Legal procedures, especially those related to the rights of the death row convicts, are seen as tactics to prolong the inevitable. Media columns are not concerned with the question of how state violence is staged to obfuscate difficult questions of law and life. State killing is, in fact, made cinematic.

The anticipated hangings have also attracted the energies of NGOs and reformers. The court turned down the plea of an NGO, RACO, which wished to induce remorse in the convicts. A jail reformer wants to recite the *Garuda Purana* to the convicts to remove their fears of being put to death. The NGO is directing its energy at scavenging the bodies of the irredeemably condemned to black-mail them into remorseful consent to harvest their organs. The jail reformer takes

upon himself to read the Hindu text to prepare the condemned, as if he knows that the residual legal remedy of a "mercy petition" is an empty formality.

The President has turned down the mercy petitions. The President's statement, "Rape convicts under the POCSO Act should not have the right to file mercy petition. Parliament should review mercy petitions" is troubling. The right to file a mercy petition is a constitutional right of a death row convict. While child sexual abuse deserves condemnation and strict liability laws should be implemented, the suspension of mercy in such cases cannot be justified on the grounds that such abuse is exceptional violence.

Death penalty is not a feminist demand. Feminists have consistently argued for feminising procedure and fair trial. They have contended that more victims will be killed by rapists if death penalty was written into the rape law. This was also the view of the Verma Committee in 2013.

The problems with the implementation of POCSO are overshadowed by such populist and constitutionally-puzzling statements. The provision for mercy allows for rectifying miscarriage of justice or doubtful conviction or errors of the legal system as a result of which the law can become a killing machine. It allows for rectifying errors in the face of a lawyers' boycott and poor legal representation. It also allows for recognition of remorse and reformation, acknowledges the sanctity of life and recognises that when the law kills, it sacrifices its own humanity.

It is important for law to remind itself of humanity because it has the monopoly over lawful killing. Law's violence is distributed at different institutional sites, mostly wielded by the police and the prison officials in the field of criminal law. Such violence also lends validity to other forms of violence, encounter killings for example. The so-called "encounter" killings of the suspects in the rape and murder of a woman in Hyderabad recently was justified on the grounds that the death row convicts in the December 2012 case were yet to be hung. This flimsy excuse

for state killing of suspects operates on two planks: Blaming the delay in executions and exceptionalising rape.

Today, more than ever, death penalty is justified by evoking sexual violence. And, sexual violence is framed as an exception. But with the rise of death penalty, states like Uttar Pradesh have seen the worst ways of killing rape victims. Death penalty does not deter rape.

It is also not a coincidence that the number of extra judicial killings of rape-accused increases with the increase in capital offences in the rape law. The abolitionist argument becomes even more important in relation to extra-judicial violence. This is because the justification of state violence — judicial or extra-judicial — also tells us of the law forgetting its own quest for humanity. While the victim's family may find closure only through the hanging, collective healing cannot be found through spectacles of state violence.

When society celebrates an encounter killing of rape suspects, our judiciary should worry.

It should remember that there are no briefs without petitioners. Without any briefs of injustice, there is no doctrine or jurisprudence. And constitutionalism emerges only when petitioners approach the courts. The jurisprudence on the rights of death row convicts cannot emerge without appeals to the court. In turn, one expects the judiciary to engage with constitutional issues of life and dignity, especially when it activates law as a killing machine and agrees to sacrifice law's humanity for the conscience collective.

When feminist lawyers such as Rebecca John and Vrinda Grover approach the courts to represent the death row convicts, they do so with ethical responsibility. They teach us to think of law's quest for humanity. While abolitionists cannot appeal to the traumatised parents of the dead victim to forgive the accused, it is ethical to insist that an execution is a sacrifice of law's humanity.

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RUMBLINGS IN RANCHI

The West Singhbhum murders are a test for the Soren government. The guilty must be punished

THE FIRST CABINET decision of the Hemant Soren government in Jharkhand, elected to office in December, was to withdraw the cases related to the Pathalgadi movement. This made eminent sense since these cases, many involving charges of sedition, had no basis and were clearly meant to crush a movement that argued for self-rule by Adivasis, promised under the Panchayats (Extension to Scheduled Areas) Act, a 1996 law. However, the murder of seven persons in West Singhbhum, allegedly by members of the Pathalgadi movement, has forced the government on the defensive. Chief Minister Hemant Soren has promised that the law will take its own course and the guilty will be punished. He will be held to his word.

The JMM, in alliance with the Congress and the RJD, won the assembly elections in December by identifying itself primarily as a custodian of adivasi interests. It advocated a soft approach towards the Pathalgadi movement and promised to withdraw cases against people associated with it. This was in contrast to the BJP government's hardline stance which held the tribal identity assertion as antithetical to the development goals of the state. That the JMM agenda resonated with the adivasi population is evident from it sweeping the tribal belt in the assembly poll. Land alienation and a resurgent pride in the adivasi cultural identity, issues flagged by the Pathalgadi movement, were instrumental in tribals consolidating in favour of the JMM. The resolve of the Soren government in upholding the law will be tested now since the murders are suspected to be the handiwork of supporters of the Pathalgadi movement: The murdered men, reportedly, were opposed to the movement. While people have a right to organise peacefully around Adivasi rights and even insist on self-rule, as imagined under PESA, no one can take the law into their hands. This message needs to go down to the people lest they should think that a friendly government is a passport to eliminate rivals and force its agenda.

At its core, the Pathalgadi movement is a continuation of an important strand in adivasi politics that has espoused a progressive social and economic agenda for decades. It argued for Adivasi control over land, water and other natural resources and advocated a transformative development agenda for the community. The movement, led mainly by JMM, was successful in carving out the Jharkhand state from Bihar. However, the radical spirit of the movement was lost as its leaders pursued political power. Corruption became pervasive and governance took a back seat. The Pathalgadi movement can be a corrective force in Jharkhand politics and reshape the state's development priorities. But for that, it needs to guard against becoming a prisoner of a militant agenda; it must reimagine its politics and enable social transformation by engaging with the state.

LADY GAGANAUT

India's human spaceflight programme will be trailblazed by an anthropomorphic robot powered by artificial intelligence

THE FIRST GAGANAUT to head for space in an Indian craft will not be human, but humanoid. The anthropomorphic robot named Vyomamitra, which has been unveiled by Isro, will fly two missions to test the technological environment which human gaganauts will inhabit on India's first demonstration of human spaceflight in 2022, as well as the systems and instruments that they would use. Vyomamitra cannot test the cabin ecosystem, of course — she would not be able to breathe the air — but she is perfectly capable of issuing commands, activating switches and, obviously, communicating with earth. Driven by speech synthesis software and artificial intelligence, her prototype has already chatted with people at the Isro event where she was introduced to the public, and future iterations will be able to give company to human travellers on the loneliest frontier.

Vyomamitra will be executing the pioneering role which has traditionally been given to animals — testing systems for survivability. Fruit flies and monkeys were the first beings to lift off, riding V2 rockets with devices monitoring their vital signs. Cats and rats went to space, though all the publicity went to Laika, the first dog to get out there. However, using a humanoid robot is obviously more useful, because it can be used to replicate the behavioural and operational responses of a human. Indeed, robots need not remain pioneers testing survivability, or assistants to human crew, but are expected to crew missions that are too prolonged or too dangerous for a human pilot.

As India prepared for human flight, in August 2019, the Russian space agency Roscosmos sent up the anthropomorphic robot Skybot F-850 to dock with the International Space Station. The mission has halted because of technical issues. But if the nation which pioneered human spaceflight with Yuri Gagarin's mission in 1961 is sending humanoid robots into space, survivability testing is not the only legitimate goal of missions powered by artificial intelligence and robotics. They also provide opportunities to test and develop these technologies under circumstances that do not prevail on earth. The inputs, goals and skills learned are different and while AI on earth specifically focuses on creating systems which do not think like humans, the space industry would value systems that are human-like, to stand in for crew. Vyomamitra represents the very first iteration of AI in space, and later generations could prove to be as essential for spaceflight as cryogenic engines.

JUST A NAUGHTY BOY

Terry Jones helmed Monty Python into a cult following. But he was never audacious

YOU DON'T NEED to follow me. You don't need to follow anybody. You have got to think for yourselves. You are all different," pleads the eponymous protagonist of *Life of Brian*. A large crowd in Roman-occupied Judaea responds in agreement: "Yes, we are different". But then someone mumbles, "No, I am not". These lines lampooned a range of group loyalties — from religio-spiritualist to socialist-communist. Brian would go on to skewer humanity's quest for a messiah while caricaturing political militants, tyrants, Latin, even those who throw stones. It was heresy at its best. Christians, Protestants and Jewish groups protested. *Life of Brian* was banned in Ireland, Norway and several British municipalities. But its writer-director Terry Jones, who passed away on Wednesday, was unfazed. *Life of Brian* was followed by the even more heretical, *Meaning of Life*.

The creative force of the cult British Comedy sextet, Monty Python, Jones was perhaps the least flamboyant of the group. He met fellow Python, Michael Palin, in Oxford University in the late 1960s. In 1999, the two were joined by the Cambridge graduates, John Cleese and Graham Chapman, and later, the song-writer and musician, Eric Idle, and animator Terry Gilliam. The ensemble came together on the BBC comedy show, *Monty Python Flying Circus*. Jones co-directed the Python film, *Monty Python and the Holy Grail* with Gilliam. The two also came together for *Meaning of Life*.

A medievalist of distinction, Jones evoked the legendary British monarch, King Arthur to poke fun at larger than life personalities. He parodied Catholic attitudes towards contraception in a song-and-dance number in *Meaning of Life*. The humour was never larger than life. Perhaps that had something to do with Jones' personality, typified by the line spoken by Brian's mother — a role, he himself assayed — "He is no messiah. Just a naughty boy".



AJAY VIR JAKHAR

FOCUS ON FARMERS

Government must engage in a collaborative effort with farmer groups

THOSE IN POWER may not yet be accepting blame for the barrage of negative news on the state of the economy, but cracks are appearing in the façade. In such tumultuous times, the finance minister began the pre-budget ritual of consultations. Having inherited a mess, she faces the challenge of very limited latitude for budgetary allocations. Her task is compounded by a bureaucratic decision-making process that is incapable of factoring the imponderabilia of actual livelihoods — one that does not even properly enumerate those committing suicide.

The financialisation of policy-making has set us on an unforgiving trajectory where the corporate sector has wrung out a commitment from the government of spending Rs 102 lakh crore on infrastructure projects. It would have been wiser to prioritise investments in human capital. With around one per cent of this spend, the government could have filled all the vacancies and upgraded the ability of agriculture researchers, farm extension workers, teachers, doctors and similar professionals across India. There's a lot that those in power don't know, and they don't know that they don't know. This has culminated in a supply-side response to a demand slump, predicated on cutting corporate taxes instead of stimulating consumer demand by raising spending under MGNREGA or a one-time higher PM-Kisan dole out.

Since, it's equally important to augment government revenues, a beginning can be made by scrapping schemes such as the

Pradhan Mantri Fasal Bima Yojna and saving over Rs 20,000 crore annually. The government would be better advised to go back to the drawing board in consultation with farmers.

Pradhan Mantri Fasal Bima Yojna and saving over Rs 20,000 crore annually. The government would be better advised to go back to the drawing board in consultation with farmers. Similarly, alcohol must also be brought under the ambit of GST at the highest tax slab. After states are compensated for forgoing their alcohol revenues, the central pool will benefit by an additional Rs 30,000 crore. It's also time to impose a tax on digital services and e-commerce companies rather than reduce PDS allocations to rein in the ballooning deficit as proposed by some economists.

Changed circumstances and new understanding requires innovative approaches to policy-making. The government must finance a long-term study for developing a metrics for valuing farm eco-system services whereby farmers are paid for services to conserve the environment in a way that ensures economic sustainability of the farmer and also India's food security. For instance, farmers can be paid for rainwater harvesting and upkeep of trees. The tricky part though is to devise a differentiating metric for varying agro-ecology — a particular tree, for example, is valued differently in a rainforest and a desert. A systems approach is radically different from the present structure. Past experience indicates that it would be foolhardy to expect the Indian Council of Agriculture Research to develop one. Having perpetuated a kind of agricultural practice, it can't be expected to purge itself. Rather than lose another two decades, it is advisable now to engage in a collaborative effort with a consortium of farmer organisations.

There is an ambiguous provision to levy income tax on "dairying". Either the provision should be removed or it should be clarified that it does not include dairy farmers. Dairying is a part of agriculture and as per the Constitution, it is a state subject. The Centre cannot levy income tax on dairy farmers. Removing such quirks will improve ease of doing business. A simple notification to mandate a minimum purchase price of Rs 32 per litre for milk by institutional buyers will help regain some of the lost trust.

A suggestion that was met with considerable interest at the finance ministry's meeting was on providing eggs sourced from backyard poultry for the mid-day meal scheme. Backyard poultry is about farmer families keeping chicken at home. The benefits will be multi-dimensional; protein for school children, no-leeway for adulteration, less food miles, families regaining self-esteem, developing community spirit and jobs in all six lakh villages across the country. The enabling factor is not eggs, but the process of sourcing eggs from marginal, small and landless farmers. A competitive bidding process or allowing participation of commercial poultrys will kill that very objective.

The finance minister had suggested extending the discussion to local sourcing of other products for mid-day meals. However, the current nutrition policy of India, increasingly influenced by commercial interests, is unlikely to enable it.

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JANUARY 24, 1980, FORTY YEARS AGO

TENSE SUBCONTINENT PRESIDENT NEELAM SANJIVA Reddy expressed "grave concern" at the intervention of outside forces and induction of armaments into India's neighbourhood as this had created a "dangerous situation" for India and the region. The developments in Afghanistan had highlighted the re-emergence of the Cold War. Turning countries in India's neighbourhood into a theatre of big power rivalries was "totally unacceptable", he said at joint session of Parliament.

RESERVATION MOVES HOME MINISTER ZAIL Singh introduced in the Lok Sabha a Constitution amendment Bill

to extend the period of reservation for Scheduled Castes and Scheduled Tribes, and the representation for the Anglo-Indian community by nomination in the Lok Sabha and the State assemblies, for another 10 years.

ARMS TO PAK INDIA HAS TOLD the US that the nature and range of arms being supplied to Pakistan does not tally with the professed purpose behind the arms aid. External Affairs Minister P V Narasimha Rao told the Lok Sabha that the matter would also be taken up during the visit to India of President Carter's emissary, Clark Clifford. He hoped the dialogue would bear fruit and "some improvement" will be made.

PROBE AGAINST SHAH AN INTERNATIONAL COMMISSION to probe the alleged violation of human rights under the regime of the former Shah of Iran is part of the "package agreement" that the UN secretary general, Kurt Waldheim, has worked out with the government of Iran for the release of the American hostages. Speaking to newsmen at Delhi airport before his departure for Pakistan, Waldheim said he was still holding negotiations with the Iranian authorities for the hostages' release and expressed hope that with the setting up of the inquiry commission "it will be possible to iron out the remaining problems".

13 THE IDEAS PAGE

When students are restive

While protecting the right of students to dissent, we also need to reeducate ourselves about keywords such as freedom, democracy and equality. A dialogic civic engagement is essential for hope to triumph over hatred



RUKMINI BHAYA NAIR

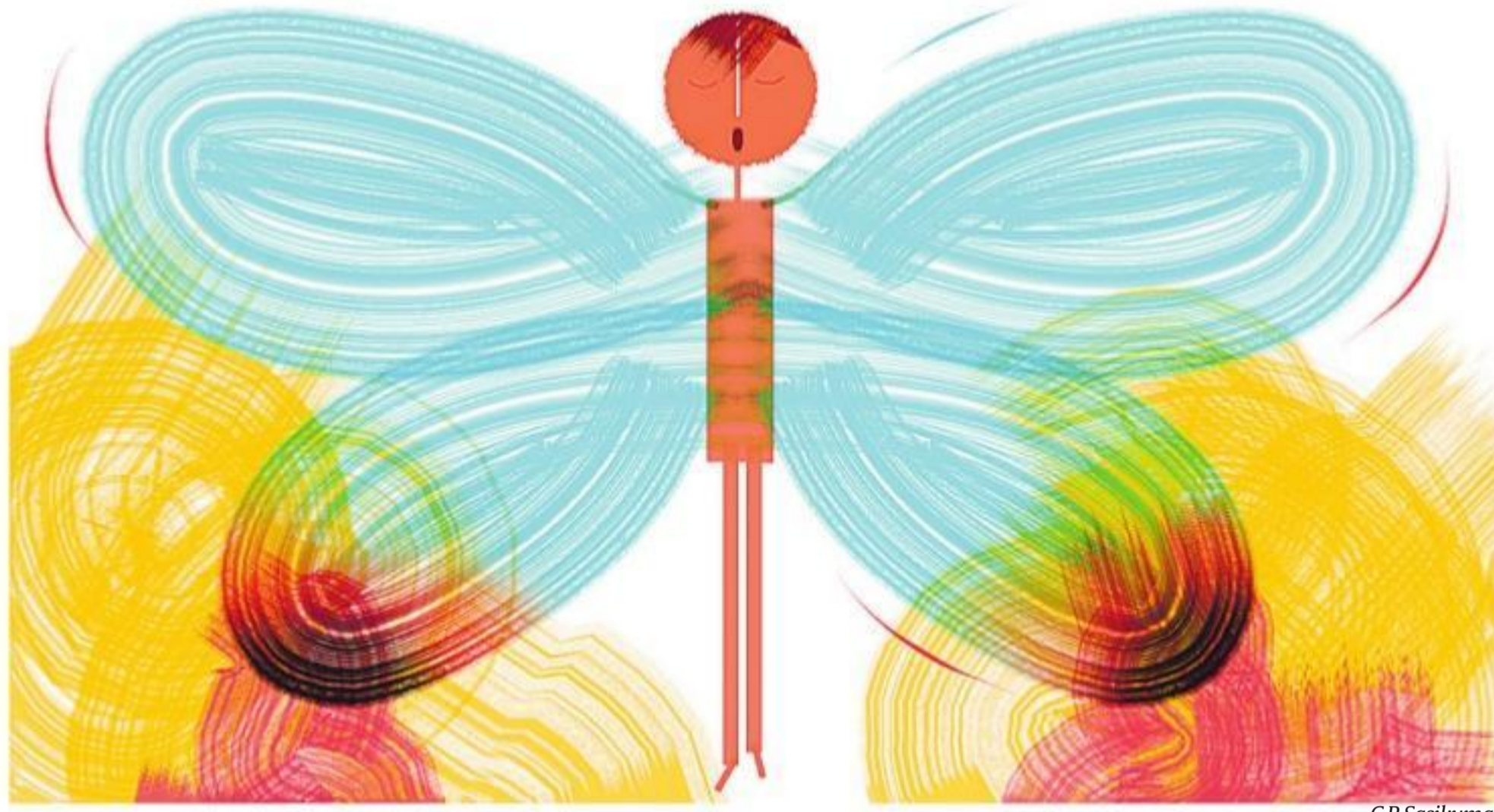
A POLITICIAN NOT hungry for power is almost as hard to imagine as a tiger that abjures meat. His natural diet is power, particularly over the grand narrative of history. An academic, on the other hand, is a herbivore, whose predilection is for interpretative ambiguity, an abiding tendency to ferret out the flaws in received historical texts. The metaphoric division among these groups is demonstrable. There's a Marx for every Marat, and a Gandhi for each Gibbon. History arranges, too, for occasional disturbing confrontations, in a broadly Weberian sense, between these putative "types" of social agent.

In the student protests that have occurred across the country over the past month, we have witnessed clashes that could partially be described in terms of Weber's notion of "disenchantment". True, political parties have quickly jumped on the bandwagon and aligned themselves with or against the movement. Yet, among university students, the slow burn of a smouldering resentment has been apparent for some years. This was bound to flare up sooner or later. From focused anger against caste and religious discrimination and severe fee-hikes to a generalised discontent about mediocre teaching and a lack of prospects after graduation, students have felt disenfranchised. In certain situations, they have committed suicide, surely the ultimate act of protest. Only last semester, one of my best students in the engineering sciences told me that he did not want a job, nor did he want to do research; he just wanted to "do nothing". Small, everyday anecdotes like this raise big troubling questions about a story that has captivated us of late. This is the joyous narrative of the "demographic dividend" wherein an overwhelmingly young, aspirational India on the move will beat all odds. The irony is that it is exactly this population that is now showing signs of acute distress, manifest in their widespread opposition to the Citizenship Amendment Act (CAA) and the National Register of Citizens (NRC).

Several analysts have, however, raised the question: Why these particular inflexion points? What is it about the CAA and NRC that has so mobilised our youth? It is here the idea of "disenchantment" could help us — and we will certainly need such framework of analysis as these "leaderless" movements develop.

The argument, following Weber, would go a bit like this: As individuals born into modernity, we are not disenchanted just because something awful happens to us personally, such as a series of tragedies in the family. In a society like India, we might rely on the traditional consolations of karma or kismet to explain these terrible happenings. The personal is decidedly not the political here.

Disenchantment, on the other hand, takes hold when large, shared ideals such as those fostered by contemporary nation-states appear to fail citizens or when there are severe clashes of ideology about how to arrive at a cooperative goal such as universal employment or healthcare. Political ideals immensely bigger than personal dilemmas tend, in short, to trigger affective "disenchantment". Both the CAA and NRC turn on the central concept



C R Sasikumar

of "the citizen", which is precisely the sort of capacious domain that can inspire ideas of national unity, as well as widespread disenchantment. This is because they raise for the youth of this country (and for all of us) a difficult question that may have gone unasked in their lifetimes, namely: What makes someone a citizen and can some citizens be less equal than others in the eyes of the state? So fundamental is this query about the constitution of our society that we cannot shy away from a vigorous debate on the subject. And we must remain stubbornly committed to protecting the rights of our students to gather peacefully and speak out forcefully. We have also to reeducate ourselves, almost 75 years after Independence, about the meaning of words we have since often carelessly taken for granted — keywords such as freedom, democracy and equality. This dialogic "citizens route" is our only, fairly narrow, path towards "re-enchantment" or the magical triumph of hope over hatred.

Weber maintained that people can be so charmed by the ideals that "charismatic" personalities place before them that they are ready to put their material well-being and even their lives at risk for these idealist causes. India, of course, has had no dearth of such charismatic personalities both in its "religious" past and its "secular" present. However, it is when such leaders are seen as non-performing or manipulative that the processes of disenchantment set in. Weber (a thinker whose lifespan ran roughly parallel to Gandhi's) was himself pretty disenchanted by the post World War I scenario. He regarded the bureaucracy of his time as an "iron cage", discerned "dirt, muck, dung and horseplay" everywhere, castigated politicians as "windbags" and opined that leftists like Rosa Luxemburg belonged in "the zoological gardens". Do we not hear echoes in these choice phrases about our own current discontents?

To return here to the theme of student unrest with which I began, we know the word "student" is paired with the word "teacher" in an inextricable semantic conjunction. Like "parent-child" or "husband-wife", not to mention the Hegelian "master-slave" duality, an understanding of one part of these expressions implies knowledge of the meaning of its "other". It is this long-standing relationship that has been destabilised today. As a teacher over the past 30 years, the naïve

The awesome power of robot-avatars and social media to guide our emotions and of tech-companies and governments to covertly watch, not to say control our actions, now requires us to radically update Weber's crucial insights concerning enchantment and social action. A revised partnership agreement between teachers and students is therefore urgently called for as we enter this unknown nth space of citizenship. There is no doubt in my mind that it is in this cyber-world of augmented reality that vital battles over possible disenchantments will be fought in the future.

thought that I want to end with concerns the reversal of the basic "teacher-student" pairing in an environment where mesmerising new enchantments that Weber never anticipated have entered our world.

If Thomas Carlyle wrote in the 19th century, at a time when the diversification of knowledge via the technological invention of the printing press was well underway, that the "true university" of his day was "a collection of books", perhaps the true university of our times is the Internet. An immediate reconsideration of the teacher-student, guru-shishya, compact is prompted by this simple comparison. Today, our cell-phones are not only our most intimate companions but de facto the most go-to sources of knowledge. They are our most creative teachers — or are they? Certainly, we have to concede that our students are much more at home in, and ready to engage with, this beguiling virtual world than we are. Online witnesses to methods of dissent ranging from Me-Too marches in the US to student uprisings in Egypt and Hong Kong, they have observed the exhilarating power of tiny hand-held devices to bring down entire regimes.

Concurrently, the awesome power of robot-avatars and social media to guide our emotions and of tech-companies and governments to covertly watch, not to say control our actions, now requires us to radically update Weber's crucial insights concerning enchantment and social action. A revised partnership agreement between teachers and students is therefore urgently called for as we enter this unknown nth space of citizenship. There is no doubt in my mind that it is in this cyber-world of augmented reality that vital battles over possible disenchantments will be fought in the future. In the present, though, we are left with Weber's implicit suggestion that the best political action cannot but extensively involve our universities since "it is the intellectual who transforms the concept of the world into the problem of meaning".

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WHAT THE OTHERS SAY

"Far too often, the state cedes to the demands of undemocratic mobs. A refusal to look at reality with all its nuances or have honest conversations about sensitive issues has resulted in a distinctive hypocrisy that permeates Pakistani society." — DAWN

The shadow of Emergency

The SC order on communications lockdown in Kashmir rejected the government's attempt to gain judicial sanction of Emergency-style powers



GAUTAM BHATIA

THE SUPREME COURT judgment on the communications lockdown in Kashmir will be remembered for many things. It will be remembered for being delivered during the longest internet shutdown in any democratic country. It will be remembered for the first apex judicial verdict on the constitutionality of internet shutdowns. It will be remembered, with some disappointment, for laying down a set of detailed constitutional principles, but refraining from applying them to the case before it, and thus, effectively, enabling the shutdown to continue, at least for the foreseeable future.

But more than any of that, the case deserves to be remembered for the kinds of arguments the government, and its lawyers, made before the Supreme Court. From August 5, the day of the communications lockdown and the imposition of Section 144 of the CrPc in Jammu and Kashmir to the present day, the government has not even made public the orders that constitute the legal bases of the lockdown. In other words, the government took away the fundamental rights of seven million people without even the courtesy of informing them why it was doing so or enabling them to challenge its decision in court. And before the Court, the government then argued that it did not need to do so because the very fact of publishing the orders would jeopardise "national security". In short, the government argued for a regime of secret laws and secret orders, answerable to only the imperative of national security.

The government's second argument was even more insidious and dangerous. Citing cross-border terrorism in Kashmir, it effectively argued that it was accountable to no one as long as it invoked the two magic words — "national security". Why had the internet shutdown been imposed upon an entire people? Do internet shutdowns actually help in containing rumour mongering and stopping violence? Research shows they do not. If the issue was the use of the internet to "radicalise" people, could there not have been more targeted and narrower ways to accomplish the goal, such as a selective blocking of websites? Could the government not achieve through its surveillance and intelligence network what it was trying to achieve by cutting off the rights of seven million people? Were the damages of the internet shutdown — damages marked by extraordinary financial loss, loss of effective expression, and granting a shield for state impunity — justified? According to the state none of these questions could be even asked, let alone answered, because all this was in the domain of "national security".

"National security" thus became a shibboleth that the government, and its lawyers, used for denying to show the legal basis of its actions, and then to deny justifying them

at all. Perhaps not since Attorney General Niren De stood up in 1976 and argued that the Emergency allowed the police to shoot anyone on sight, had such a claim for naked, untrammelled executive supremacy been advanced before the Supreme Court. And in 1976, at least, there existed the formal declaration of an Emergency, and the formal suspension of fundamental rights. Here, the state wanted to universalise the state of Emergency: Any invocation of the words "national security" would be treated as conclusive proof of the existence of an Emergency, and a justification for granting the state near-total impunity.

The acceptance of these arguments would have taken us down a dark path indeed. And it was therefore fortunate that in the judgment, both the arguments made by the state's lawyers were roundly rejected. On the first count, the Court held that the basic principles of legality and the rule of law required that the shutdown orders be published and made available to the people so that they could know the reason why their rights were being restricted, and to challenge them if they so desired. If the government wanted to withhold or redact the orders, or any part of them, it would have to show in each individual case why that was necessary.

The Court's second holding was even more important. It noted that at all times when the state sought to restrict individual rights, the principle of proportionality would apply. Proportionality is crucial, because it does not content itself merely by asking whether the state is pursuing a valid goal in its crackdown upon rights. Proportionality also queries the means by which the state has done so. And if the means are excessive, disproportionate, irrational, or otherwise unconstitutional, state action is struck down. For example, one of the important limbs of the proportionality test is whether the state has selected the "least restrictive" or "least intrusive" method in order to achieve its goal. This limb is based upon the idea that even when it wants to go after terrorists or maintain law and order, a democratic state must at all times respect individual rights to the maximum possible degree because the means matter as much as the goal, and the rights of the individual are not so fragile that they are simply effaced in the larger "national interest".

The proportionality test, thus, would necessarily require the state to come to the Court and explain itself. The state would have to justify why it had taken the steps it had, whether it had considered taking less restrictive steps, and, why less restrictive steps wouldn't work. And this is exactly how it should be.

The Supreme Court's judgment, thus, is an important one, even though it failed to grant relief to the people whose rights were before it — the Kashmiris — who have now been deprived of the internet for more than five months. It is important because the strong invocation of the principle of proportionality can be used as a platform for challenging internet bans across the country; but also because the government's attempt to gain judicial sanction of Emergency-style powers was roundly rejected, for now.

Bhatia is one of the lawyers appearing in the communications lockdown case

With a flag, song and book

Reclaiming national symbols is an act of political genius and imagination



SUSHANT SINGH

THE ENGLISH-SPEAKING urban youth usually ring in the new year in Delhi with their socio-economic equals in stratified environs of clubs, pubs, restaurants and homes. But this new year's eve, it was at radically different places — on the road outside the Jamia Millia Islamia University or at Shaheen Bagh — two of the most iconic places linked with the recent civic protests against the CAA and NRC. Here they mingled freely with people they would rarely interact with as equals, and that too, in a public space.

If that was not radical enough, what happened at the midnight hour was a moment that portends something significant for India in the coming decade. As the clock struck 12, those gathered there broke into the national anthem. Never has any public gathering in post-Independent India witnessed such a passionate singing of the national anthem, not even after a major sports victory when patriotism and nationalism are usually at their apogee.

The singing of the national anthem by the people at Shaheen Bagh or outside Jamia took no one by surprise. From the day they started, these civic protests were marked by lusty wavings of the national tricolour, public readings of the Preamble to the Constitution, and now, the singing of the national anthem. Cynics can allege that this was part of a tactical ploy by the protestors to

shield themselves from being labelled "anti-national". But that argument is rebutted by the fact that these protests, all over the country, are neither centrally directed nor centrally organised. In fact, it is not unusual to witness multiple protests by various groups at the same site, merging and demerging at the same time, ruling out any possibility of a devious diktat by a central authority for everyone to flout the national symbols.

The presence of national symbols and icons is simultaneously marked by an absence of religious and sectarian symbols, even though the issue directly affects the Muslim community. This is not coincidental, but points to a critical shift in the form and manner of civic protests and democratic engagement in India's public spaces.

How does a group of citizens perceive, articulate and negotiate their citizenship claim? The young Muslim, who has been the ideological and organisational fountainhead of these protests in her community, has not chosen religion or community as a means of intermediation with India's democracy. She has instead chosen the Constitution as the instrument to engage with the democratic setup and assert her citizenship as an Indian, without sacrificing her Muslim identity.

It is this wilful choice which makes the tricolour and the national anthem such a natural fit in these protests, unlike a forced effort

to place a tricolour among a sea of party or religious flags. Moreover, the Constitution, as the intermediary, has provided the metaphor for members of all classes, castes, communities and demographics to join these protests — these larger solidarities are at the heart of the optimism, creativity and enthusiasm witnessed on the streets. It reinforces the political argument that citizenship and democracy belong together — naturally compatible and mutually complementary.

Every single dimension of the concept of citizenship is being challenged by the CAA-NRC regime of the Narendra Modi government: Citizenship as a legal status, citizenship as a bundle of rights and entitlements, and citizenship as a sense of identity and belonging. While the government officials want to restrict the contestation to one of a legal status, the ruling party politicians are keen to limit it to that of the Muslim identity. A negotiation of the idea of citizenship is inherently full of tensions and contradictions. But by placing the Constitution at the centre of the public space and the national debate, the young have involved all the aspects and expanded it to a larger question about the kind of India that they want, defeating all attempts to limit it either only to the victimisation of Muslims or to a legal contest over a new law.

There is a sharp distinction between citizenship obtained through struggle and cit-

izenship as a gift of the state. In India, the idea of citizenship evolved at the end of a prolonged struggle for the country's freedom, forging it with the idea of India. The idea of a civic struggle for citizenship has thus been intricately linked with the idea of India, which also fits in with the modern liberal discourse of civil and political rights. National symbols — the tricolour, the preamble and the national anthem — are situated at the confluence of these ideas, and the young have started their march towards reclaiming the idea of India by reclaiming the national symbols of India.

This is a generation accused of being consumed by a sense of self, often damned for not venturing beyond their own headphones. But, by clearly identifying the burden that the CAA-NRC regime would place on each individual, they have made people realise and understand what the Constitution means to each and every person.

Reclaiming national symbols, while bringing life to an abstract idea like the Constitution, is an act of political genius and imagination. Any idea becomes a force when it connects to the self. This idea has brought the young Indian to the street. Its power cannot be estimated as yet. It would be a difficult beast to tame.

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LETTERS TO THE EDITOR

CAPITAL MISTAKE

THIS REFERS TO the editorial, 'Three capital policy' (IE, January 23). The Shiv Sena-led coalition government in Maharashtra has reviewed the bullet train project. Andhra Pradesh's YSR Congress has joined the list by modifying the Telugu Desam's Amaravati scheme and mooting a three-capital system. It would be a logistical nightmare to operate from separate executive and legislative capitals.

Vaibhav, Chandigarh

MISSING THE TARGET

THIS REFERS TO the article, 'Three as one' (IE, January 22). According to the government, the CAA gives citizenship to the persecuted Hindus, Sikhs, Jains, Buddhists, Christians and Parsis of Pakistan, Bangladesh and Afghanistan. But the clauses of CAA do not even mention the word "persecuted". Does that mean a Muslim majority country cannot persecute Muslims? Pakistan doesn't consider Ahmadis as Muslims. Similarly many in India claim there are no persecuted Hindus. But what about the Dalits, OBCs or even the poor?

Ranjit Nimbalkar, Pune

WHY RELIGION?

THIS REFERS TO the report, "No one can dare touch an Indian Muslim, come to

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.

us if any complaint: Rajnath Singh UP" (IE, January 23). This is a common refrain from Narendra Modi, Amit Shah, and other BJP leaders. If the CAA's sole purpose was to give citizenship to those persecuted outside India, including on account of their religion, that could have been done under existing laws. Granting citizenship has been easily fast-tracked for targeted groups by setting up citizenship counters, offices, or camps. Why amend the Constitution and sneak in religion in the citizenship law of a secular Constitution?

LR Murmu, Delhi