



## Question of equality

The Supreme Court has an opportunity to reconsider its 2013 order criminalising gay sex

The time has come to undo the judicial wrong done to homosexual individuals in 2013, when the Supreme Court upheld the validity of Section 377 of the Indian Penal Code, which criminalises gay sex. A reconsideration of the flawed verdict in *Suresh Kumar Koushal* is now in prospect. A three-judge Bench has opened up an opportunity to reconsider that verdict, which came to the disturbing conclusion that the LGBT community was just a “minuscule fraction” of the population and also ruled that those having sexual intercourse “against the order of nature” constituted a separate class on which the law could validly impose penal sanctions. Although the matter is already before a Constitution Bench by way of a curative petition against the earlier judgment, the latest order is on a fresh petition challenging Section 377. It draws from the observations in the nine-judge Bench judgment in the ‘right to privacy’ case. The majority observed in *Justice K.S. Puttaswamy v. Union of India* that “equality demands that the sexual orientation of each individual in society must be protected on an even platform. The right to privacy and the protection of sexual orientation lie at the core of the fundamental rights guaranteed by Articles 14, 15 and 21 of the Constitution.” The Bench has rightly observed that social morality changes from age to age, that “the morality that public perceives, the Constitution may not conceive of;” and that what is “natural to one may not be natural to another”.

Thus, there is fresh hope that the Delhi High Court judgment of 2009, which read down Section 377 to decriminalise consensual sex between adults, may be restored. Ever since the court, in *National Legal Services Authority v. Union of India* (2014), concerning the rights of transgender persons, questioned the *Koushal* reasoning, there has been a body of jurisprudence that sees gender identity and sexual orientation as an aspect of privacy, personal freedom and dignity. It is not yet clear if the present petition and the curative petition will be heard together. A curative petition is normally allowed only on the limited grounds of violation of principles of natural justice and circumstances suggesting possible bias on the part of judges. In contrast, the latest petition has paved the way for a comprehensive hearing on all dimensions of the right of individuals to affirm their sexual orientation. In this, the court must not confine itself to the issue of privacy, but also address the discrimination inherent in Section 377 on the basis of sexual orientation. The formulation in *Koushal* that constitutional protection is not available to a tiny fraction of the population can be overturned only on the touchstone of Article 14, which protects the right to equality.

## Avoiding roadkill

Roads must be kept out of wildlife corridors to protect tigers and other animals

The tragic death of Bajirao, one of India’s breeding tigers from the Bor reserve in Maharashtra, on a highway is a reminder that building unsuitable roads through wildlife habitats has a terrible cost. Losing a charismatic tiger in its prime to a hit-and-run accident is an irony, given that it is one of the most protected species. Successive Prime Ministers have personally monitored its status. Yet, the fate of the big cat, and that of so many other animals such as leopards, bears, deer, snakes, amphibians, butterflies and birds that end up as roadkill, highlights the contradictions in development policy. It is inevitable that new roads are built, but good scientific advice to keep them out of wildlife corridors is mostly ignored. The sensible response to the growing number of roadkills should be to stop road construction in wildlife habitat and reassess the impact. After all, protected areas are just 4% of the land. India is committed to such an approach under Article 14 of the Convention on Biological Diversity. The Centre and the National Highways Authority of India have been repeatedly advised by the National Board for Wildlife, as well as independent researchers, to realign or modify sensitive roads. They should heed their sound advice.

An assessment by the Wildlife Institute of India states that tigers in at least 26 reserves face the destructive impact of roads and traffic. The National Tiger Conservation Authority should insist on modification of existing roads to provide crossings for animals at locations identified in various studies. A more robust approach would be to realign the roads away from all such landscapes. Users can be asked to pay a small price for the protection of vital environmental features, and more areas for nature tourism can also raise revenues. This would ensure that tigers and other animals are not isolated, and can disperse strong genetic traits to other populations. In one well-studied case of two populations of breeding tigers in the Kanha-Pench corridor, which also forms part of the sensitive Central Indian belt, scientists commissioned by the Environment Ministry found that a national highway could block flow of genes between regions. The remedy suggested for NH7 was a combination of realignment and creation of long underpasses for animal movement. That is the sustainable way forward, and the Centre should order the modifications without delay wherever they are needed. It would be consistent with the Wildlife Action Plan 2002-2016 announced by Atal Bihari Vajpayee as Prime Minister. Also, curbs should be imposed on traffic on existing roads passing through sanctuaries. This can be done using speed restraints and by allowing only escorted convoys, with a ban on private vehicular movement at night. Restrictions should be applicable to religious tourism as well. Without a determined effort, roadkill will severely diminish India’s conservation achievements.

# The Iranian crisis is not yet over

The largest public display of discontent since 2009, the current protests signal a new period of uncertainty



RAMIN JAHANBEGLOO

When revolutionary regimes stagnate, confusion and chaos reign, and both are palpably true of the Islamic Republic of Iran today. Amid a deep economic, political and now social crisis, many on the ground in Iran and even more observing from abroad don’t know what to think or to do. The recent protests which spread around Iran in the waning days of 2017 and early 2018 represented the largest public display of discontent in Iran since the 2009 Green Movement.

### Beyond Tehran

Unlike the 2009 Green Movement, which was largely a product of the urban middle class youth in Tehran, the recent unrest in Iran seems to reflect the economic grievances of the lower and working classes, alienated from institutional politics and suffering heavily from the consequences of an unjust and unequal management of the Iranian economy. As a result, these protests have been largely driven by disaffected young people in rural areas, towns and small cities who seized a pretext to express their frustrations with economic woes that are caused by Iran’s foreign policy, as the country has been largely involved in both the Syrian conflict and turmoil in Yemen.

However, more than two weeks ago, the hard-liners who encouraged the rioters to direct their economic frustrations against the reformist government of President Hassan Rouhani had no idea that a small regional expression of dissent would take on a life of its own



and turn into a general uprising. The protests, therefore, turned not only into a reaction over rampant inflation, continuous corruption and rising prices, but also focused on the crisis of legitimacy of the Islamic regime in Iran, totally misunderstood by a generation of Iranians who were too young to remember the revolution of 1979.

The growing generational gap between the Islamic state and the Iranian youth, particularly young women, has never been wider. In the ‘last 25 years Iran has been on a course of major political and societal evolution, as the increasingly young population has become more educated, secular and rebellious’.

An ‘explosive mix of a growing population – which led to a youth bulge – combined with urbanisation, an increasing unemployment rate and the rapid expansion of university education, produced new sociological actors in Iran who were essentially young and educated (and mostly women, in fact) but with no political, economic or social future. As a result, a generational gap divided Iranian society between moneymaking and powerful conservatives and young rebels without a cause. Iran became a society divided between rich supporters of the regime and poor rebels with no ideology and no political leaders. On one side

are those who use power to make money, and on the other side are those who disobey the social and political order’.

### Political fragmentation

A large segment of the youth in Iran have access to ‘satellite television and the Internet and see how their counterparts in the rest of the world, particularly in the West, are living, and they long for the same lifestyle’. Recent events indicate the impact of a long-term demographic problem which has no short term remedies and which foretells certain unavoidable truths for the Iranian regime – that undeniably, a young and restless population can only be contained and repressed for so long. For the past 40 years the Islamic regime has continuously searched for an ‘appropriate approach to cope with the challenge of governance while contending with a perpetual struggle for power between competing tendencies and grave regional and international challenges’. Political fragmentation within Iran has never been more evident, and the clerical elite have never been challenged more clearly, both at the domestic and international level.

As recent riots in cities around Iran reveal, despite the subjects having been systematically arrested or killed by the authorities, the

tension between discontented youth and the regime will continue. It happens that Iranians remain unsurprisingly unreconciled to theocracy. Moreover, even when protests in Iran start over economic issues, as in the past few weeks, it seems that people are not just ‘demonstrating for better working conditions or pay, but insisting on wholesale rejection of the system itself’. The widespread waves of protests that have swept Iran practically every ten years suggest the gradual meltdown of the theocratic ideology in Iran.

Let us not forget that ‘Iran’s recent violent protests surged among the nation’s poor, presumed bedrock supporters of the regime’, who have been disappointed by the limited economic and social improvements of the nation. The Iranian government’s promises to revitalise the Iranian economy after the re-election of Mr. Rouhani as President must be seen against the rise of youth unemployment which stands today at more than 40%. Also, those young Iranians who supported the nuclear deal of 2015 between the Rouhani cabinet and the Obama administration considered it as an ‘opportunity for Iranian civic actors to enable and empower Iran’s civil society space’.

Almost ten years ago, what was known as the Green Movement of 2009 ‘changed the destiny of the Iranian civil society. The unprecedented protests that followed the presidential elections presented serious challenges to the moral status of the theological sovereignty and its legitimacy in the world. The public anger and the ensuing infighting among the founding architects of the revolution presented the most serious challenge to Iran’s clerical regime since it replaced the Shah in 1979. Those among the reformists who believed that the system allowed

scope for reform found themselves face-to-face with a theological-political structure that used extreme violence to ensure its legitimacy’.

### The reformists’ silence

Strangely, the reformists were totally absent in leading or participating in the recent unrest in Iran. Iranian reformists, like former President Mohammad Khatami, could have provided leadership but decided to stay out of the action. Some have attributed the reformists’ reluctance to their fear of Iran turning into a new Syria, in other words, a war-torn country heading for “failed state” status and threatening the region’s fragile stability. This is certainly not what Saudi Arabia, Israel and Donald Trump’s America are looking for.

As a result, while the recent protests engulfed Iranian cities of all sizes and the country’s lower class population, the reaction among political leaders around the globe has been far from united. While Mr. Trump endorsed the protests in Iran, advocating change, the European leaders along with Russia’s Vladimir Putin took a more cautious tone, pointing to the “unpredictable outcome” of the Arab Spring. Even Saudi Arabia, Iran’s arch-enemy in the region, stayed unusually quiet.

One way or another, both inside and outside Iran, observers are worried about the future. All this as Iran might be leading to a new period of political repression and economic hardship, while its population continues to grow, with few new jobs, and more international isolation. It looks like the Iranian crisis is not yet over.

Ramin Jahanbegloo is Director, Mahatma Gandhi Centre for Peace, Jindal Global University, Sonipat

# Agriculture needs a reforms package

Only an overhaul resembling the industrial liberalisation of 1991 will work



PUJA MEHRA

With rural economic anxieties acquiring a political voice, the expectation is that the Budget will focus on agriculture. For some time, the country has been in denial over the extent of the mess in the sector.

Farm incomes are unattractive for a variety of reasons; the absurdity of policies features among them. The overriding objective of price stability, over time, has tilted farm policy in favour of the consumer, the numerically larger vote bank. Trade and price controls are highly restrictive, and mostly anti-farmer. Protection afforded to the inefficient fertilizer industry ensures that input costs are high. The farmer is forced to sell in the domestic market where prices tend to be lower than global agricultural prices. Research papers have quantified the degree of anti-agriculture bias in the system. Farmers’ economic viability is rarely the primary consideration, although political rhetoric would suggest otherwise. Increasingly though, incompetence and polit-

ics have ensured that policies are failing to serve even consumers.

Agri-markets are not free. Governments seek to influence prices, to smoothen them out. In the absence of state intervention, prices soar in bad weather years and plunge in good weather years, hurting consumers and farmers. The levers in governments’ hands are import and export controls, buffer stocks management and minimum support prices (MSPs).

### About MSPs

Prime Minister Narendra Modi is under pressure to deliver on the 2014 poll promise of higher MSPs. The centrality of MSPs in vote-bank politics is well-known, but the economics of it is not sufficiently appreciated. The MSP, the price at which the government offers to procure from farmers, is an economic policy tool which requires technical acumen.

A sensible policy would be to buy from farmers when market prices are depressed and sell stocks in the open market when prices are elevated. In the first scenario, if the MSP is pegged higher than the market price, the procurement will raise the market price, boosting farm incomes. In the latter, by offloading its stocks at a price lower than the market price, government can cushion consumers against excessive infla-



tion. The buyers of the subsidised sales (an efficient Public Distribution System) are directly benefited, but as the sales also lead to lower prices in the open market, all consumers gain.

Procurement works effectively only if trade controls and stocks management are aligned with it. How these tools tend to be deployed in a counterproductive manner was evident in the example of pulses in 2016-17. Despite a bumper harvest, after a steep MSP hike and good rains, export controls and stocking limits for private traders were retained and a record volume of imports allowed to be shipped in. The resulting glut sent the market price down, below the MSPs, rendering it pointless. The looming losses set off farmer protests seeking even higher MSPs.

The United Progressive Alliance government’s MSP policy was blamed for the food prices inflation, from 2009 to 2013. The culprit, though, was poor management of food stocks. The

government had been raising MSPs to reduce the gap between low domestic and high global agricultural prices. The launch of the National Food Security Mission and a global food prices crisis necessitated hikes more aggressive than were originally planned. The high MSP ensured that the increase in food grain production in the four-year period, 42 million metric tonnes, was more than double of what had been targeted. But the high MSP also edged out private traders, forcing a scale-up in procurement. Wheat and rice stocks surged but were not used to dampen market prices.

Former Chief Economic Adviser Kaushik Basu has written about the mindset behind the reluctance to release stocks to cool rising prices. The argument was that selling at a price lower than the purchase price (MSP plus carrying costs) would inflict losses on the exchequer and add to the fiscal deficit. Since procurement spending is a sunk cost, not selling implied even higher fiscal losses. International wheat prices were 30% lower than in India, yet consumers were forced to pay more.

### A bias

Agricultural economist Ashok Gulati’s calculations show that even after four years of systematically aggressive hikes, Indian MSPs of

rice and wheat are less than support prices in China and other Asian countries, betraying India’s bias in favour of consumers.

This bias explains the deepening economic divide between the farm-dependent and the rest of the population, reflected in insecurities of even traditionally land-owning people.

The narrative is that the bulk of agriculture is not sufficiently productive to be able to gainfully engage young rural Indians and so policy attention must be on building industry. China’s experience challenges such notions. The Chinese economic reforms were kicked off in 1978 with an overhaul of agriculture. As farm prices were decontrolled, real per capita incomes began rising and, in just six years Chinese poverty levels halved, from 33% in 1978 to 15% in 1984. In contrast, India’s 1991 reforms bypassed agriculture altogether and instead focussed completely on industrial liberalisation. Indian poverty halved in 18 years from 45% in 1993 to 22% in 2011.

The Budget presents an opportunity to revisit strategic choices. Nothing short of an overhaul of agriculture, resembling the industrial liberalisation of 1991, will work.

Puja Mehra is a Delhi-based journalist

## LETTERS TO THE EDITOR

Letters emailed to letters@thehindu.co.in must carry the full postal address and the full name or the name with initials.

### Reason for optimism

It is true that as far as Indian diplomacy is concerned, it is unable to keep pace with a rising China. Its engagement with Pakistan is most unsatisfactory, while the potential for turmoil in West Asia can be a source of worry. However, there are reasons to be optimistic (Editorial page, “Dark clouds across Asia”, January 9). The image that China is trying to cultivate, of a country which is “rising peacefully”, has been blown away after the Doklam stand-off. Second, though India cannot compete with China in implementing massive infrastructure projects, the developing world, where China is trying to make an impact, cannot ignore Chinese neo-colonialism as is evident in the potential debt trap that some of these

countries might face after receiving Chinese aid. India’s pursuit of infrastructure projects such as the Asia-Africa growth corridor, in collaboration with Japan, is based on the rule of law, trust and transparency. Third, the coming together of the U.S., Japan, India and Australia to form a Quadrilateral to maintain peace in the Asia-Pacific region shows India’s significance in the region. As far as Pakistan-sponsored terrorism is concerned, there is a global consensus building up against terrorism of all kinds, so China’s efforts to create road blocks in this area may not pay off. Lastly, regarding the turmoil in West Asia, India has always maintained the need to settle the disputes amicably.  
ATUL KRITTI,  
New Delhi

### Lessons for UIDAI

In the issue around the Unique Identification Authority of India’s FIR, the government agency needs to be reminded that one of the prime duties of the media in any democracy is to bring matters of concern into the public domain so that the executive and the judiciary can come to the rescue of victims (Editorial - “Data theft”, January 9). In the present case, the UIDAI’s foremost duty should have been to ascertain whether its data security measures have failed and, if so, to identify the weak points. Instead of threatening the mediaperson, the agency should have taken the help of the newspaper to find out what is wrong. The UIDAI also appears to ignore the existence of operators in village-level enterprises once entrusted by the government with

issuing Aadhaar cards, and later rendered jobless. There are ample clues that they have access to UIDAI data. The agency should recognise the fact that there were thousands of such operators.

P.R.V. RAJA,  
Pandalam, Kerala

### Before the gavel strikes

The Supreme Court’s decision to refer a writ petition seeking the striking down of the homophobic law built into Section 377 of the Indian Penal Code to a larger Bench has been widely welcomed (“Larger Bench to decide on Sec. 377”, January 9), especially in the context of the right to privacy having been reckoned to be a fundamental right. While the court’s willingness to review its own earlier decision is a sign of judicial sagacity and progressivism, one fails to

understand why the court has no functional mechanism for judicial review when a major ruling such as the one about the right to privacy automatically renders some earlier judgments inappropriate or redundant. Should the court have waited for some petitioners to inform it that its 2013 decision on Section 377 militates against the right to privacy? The government has deleted many obsolete laws from the statute books. The Supreme Court should also have a well-established procedure to review its own decisions on an ongoing basis. Judicial wisdom is not a tame process, and is supposed to be alive to the incongruities and inconsistencies in judicial pronouncements.  
V.N. MUKUNDARAJAN,  
Thiruvananthapuram

### Transport strike

The bus strike in Tamil Nadu is taking a toll on the travelling public, even after the Madras High Court has directed the employees to return to work (Some editions, “HC order on bus strike stays”, January 9). The State government, already riven by factionalism, is definitely unable to break the deadlock. This is a clear case of harassing the common man who is largely dependent on public transport. It is a fact that transport undertakings are facing huge losses and any prolonged agitation will cripple them further. It would be in the interests of the employees themselves to withdraw their mass agitation and resume work immediately.  
V. PADMANABHAN,  
Bengaluru

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