



Standard deviations

Delay in releasing key employment data has undermined the credibility of data officialdom

The resignations of the National Statistical Commission's acting Chairperson P.C. Mohanan and member J.V. Meenakshi appear linked to the Centre's refusal to release new data on employment that were due to be made public in December 2018. They could also be related to unease about the recently unveiled back-series data on the economy, which recorded slower growth during the UPA-led government's rule, and were released by the NITI Aayog bypassing convention and the commission's views. Reports suggest that the findings of the new Periodic Labour Force Survey, for July 2017-December 2018, are not too flattering, with unemployment registering a five-decade high. The government has said no such reservations were expressed by Mr. Mohanan or Dr. Meenakshi during NSC meetings and that the report will be released after 'quarterly' data for the survey period is processed. A key role of the NSC, set up in 2006, is to verify whether data being put in the public domain are reliable and adequate. Information has been collected and disseminated by successive governments under laid-down schedules, earning Indian data greater global trust than most other emerging market peers, especially China.

On the question of job-creation for the youth, the Prime Minister and his Cabinet have been building an argument that jobs abound, but credible data are missing. The National Sample Survey Organisation's quinquennial employment surveys were to be conducted in 2016-17. The year was switched to 2017-18 as the new Labour Force Survey was being prepared to replace it. Separately, a quarterly survey of select employment-intensive sectors initiated by the Labour Bureau after the 2008 global financial crisis, that provided some clarity on ground realities, was inexplicably junked. Instead, proxy data from enrolments into social security schemes for formal sector employees are being touted as a sign of job-creation: economists have rightly called them out as inaccurate. Even then, Arun Jaitley, in his last year's Budget speech, cited 'an independent study' to claim seven million formal jobs will be created in 2018-19. The Centre for Monitoring Indian Economy has pegged job losses in 2018 at 11 million based on its regular employment surveys. The government's coy approach to jobs-related data may be due to its disastrous demonetisation gambit which hurt supply chains and informal jobs in the economy and whose effects have lingered. Contrast this with the NSSO surveys of 2009-10 that revealed little good news on household incomes and job-creation, thanks to after-effects of the global financial crisis. The UPA didn't dither from releasing the data, took criticism on its chin, explained it was an exceptional situation and commissioned another set of surveys in 2011-12 to correct for the timing. The Modi government should have treaded the same path without upending India's statistical integrity.

Hawkish move

The U.S.'s unilateral withdrawal from a nuclear treaty threatens to kick-start a new arms race

The Donald Trump administration's decision to withdraw from the Intermediate-Range Nuclear Forces (INF) treaty with Russia is a retrograde step. Signed in 1987 by Ronald Reagan and Mikhail Gorbachev, it barred both countries from deploying land-launched cruise missiles in the 500- to 5,500-km range. However, Russia appears to have been covertly violating it in letter and spirit. The U.S. in 2008 expressed concern over the Russian Novator 9M729 missile tests and in 2014 alleged that Moscow was testing a ground-based cruise missile. Yet, the U.S. response cannot be regarded as purely retaliatory. Both Mr. Trump and his National Security Adviser John Bolton are on the record expressing what some consider to be a sense of disregard for arms control agreements. Before taking up the NSA role, Mr. Bolton said in his book that the U.S. "arms control theology" had been "kept on life support during the Clinton presidency by devotion and prayer rather than hard reality". Mr. Trump, who scuppered the nuclear agreement with Iran, has hinted he would refuse to abide by a treaty that other parties were disregarding. There is now a sense of alarm that the New Strategic Arms Reduction Treaty (START), which limits both countries' arsenal of intercontinental ballistic missiles, and will lapse in 2021, might be scrapped next.

At the heart of this worrisome echo of the Cold War years is the changing balance of power in global nuclear politics heralded by China's rise as a regional hegemon; its growing arsenal poses a threat in the eyes of strategists in Washington. In 2018, the U.S. Nuclear Posture Review noted that Beijing was steaming forward with the expansion of its cruise-missile arsenal, potentially neutralising the capability of American warships that could seek to approach the Chinese coastline during a standoff. Shifting geo-politics also requires that European concerns be factored into strategic discussions on the INF, particularly because it is Europe that is most immediately threatened by the Russian stockpile. However, going by the surprised reactions from European officials, it appears that Mr. Trump may not have consulted with European allies before announcing the suspension of the treaty. Mr. Trump's thinking may rest on the fact that he could now develop ground-launched missiles, and perhaps keep Moscow's aggression in check through a military-posture superiority, and also save the exchequer some cash, for this option is cheaper than cruise missiles that can be fired from aircraft, ships, or submarines. Nevertheless, in pulling out of the INF, Washington is effectively throwing away leverage it may have had with Russia on an issue of global concern.

Legitimacy of the basic structure

The doctrine may be derived from the abstract. But it exists within the Constitution itself



SUHRITH PARTHASARATHY

It has now been more than 45 years since the Supreme Court ruled in *Kesavananda Bharati v. State of Kerala* that Parliament's power to amend the Constitution was not unlimited, that the Constitution's basic structure was infrangible. But as entrenched as this doctrine might now be, it remains, to some, a source of endless antipathy. There have already been grumblings over the rule's legitimacy in certain quarters in response to challenges made to the recently introduced 103rd Constitutional Amendment, which provides for reservations based on economic criteria in government jobs and education.

Unwarranted censure

The common criticism is that the doctrine has no basis in the Constitution's language. The phrase "basic structure", it's argued, finds no mention anywhere in the Constitution. What's more, beyond its textual illegitimacy, its detractors also believe the doctrine accords the judiciary a power to impose its philosophy over a democratically formed government, resulting in something akin to what Union Minister Arun Jaitley once termed as a "tyranny of the unelected".

Unquestionably, some of this censure is a result of the Supreme Court's occasionally muddled interpretation of what the Constitution's basic structure might be. But to reject the doctrine altogether because the judiciary sometimes botches its use is to throw the baby out with the bathwater. For not only is the basic structure canon legally legitimate, in that it is deeply rooted in the Constitution's text

and history, but it also possesses substantial moral value, in that it strengthens democracy by limiting the power of a majoritarian government to undermine the Constitution's central ideals.

Ever since the Constitution was first amended in 1951, the true extent of Parliament's power to amend the document has been acutely contested. But the dangers inherent in granting untrammelled power to the legislature were perhaps best brought out in a lecture delivered by a German professor, Dietrich Conrad. His talk "Implied Limitations of the Amending Power", delivered in February 1965 to the law department of the Banaras Hindu University, came at an especially fraught time. Only months earlier Parliament had introduced the contentious 17th Constitutional Amendment. Through this, among other things, a number of land reform legislations had been placed into the Constitution's Ninth Schedule. This meant that those laws, even when discriminatory, were immunised from challenge.

But it wasn't the merit of the amendment that troubled Conrad. He was concerned with the suggestion that Parliament's power to alter the Constitution was plenary. Influenced by the theoretical scholarship of the jurist Carl Schmitt, Conrad believed that even if a legislature were bestowed with the widest of powers to amend the Constitution, its authority was always subject to a set of inherent constraints. Parliament, he contended, was, after all, a creature of the Constitution. It could not, therefore, make changes that had the effect of overthrowing or obliterating the Constitution itself.

As A.G. Noorani has pointed out, Conrad was affected by his own country's history. In Germany, the virulent end brought to the Weimar Republic by Nazism had meant that when the country adopted its Basic Law in 1949, it quite explicitly placed checks on



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the legislature's powers. This included a bar on lawmakers from amending those provisions of the Basic Law that concerned the country's federal structure, that made human rights inviolable and that established constitutional principles such as the state's democratic and social order.

Questions to ponder

In his lecture, Conrad said India hadn't yet been confronted with any extreme constitutional amendment. But jurists, he warned, ought to be mindful of the potential consequences inherent in granting Parliament boundless power to change the Constitution. How might we react, he wondered, if the legislature were to amend Article 1, for example, by dividing India into two. "Could a constitutional amendment," he asked, "abolish Article 21, removing the guarantee of a right to life? Or could Parliament use its power "to abolish the Constitution and reinstitute... the rule of a Moghul emperor or of the Crown of England?"

Although it was delivered to a limited audience, M.K. Nambyar, who was to soon lead arguments in the Supreme Court against the 17th amendment in Golaknath's case, was alerted to Conrad's urgings. Devoid of any direct precedent from other Commonwealth nations, where an amendment had been subject to the rigours of

judicial review, Nambyar thought the German experience carried with it a set of important lessons. Were Parliament's powers considered infinite, he argued, the parliamentary executive can be removed, fundamental rights can be abrogated, and, in effect, what is a sovereign democratic republic can be converted into a totalitarian regime.

Interpreting 'amendment'

The court, in *Golaknath*, didn't quite feel the need to go this far. But, ultimately, just four years later, in *Kesavananda Bharati*, it was this formulation that shaped Justice H.R. Khanna's legendary, controlling opinion. While the judge conceded that it wasn't possible to subscribe to everything in Conrad's arguments, this much, he said, was true: "Any amending body organized within the statutory scheme, howsoever verbally unlimited its power, cannot by its very structure change the fundamental pillars supporting its Constitutional authority." Yet, the limitation, wrote Justice Khanna, wasn't as much implicit from a reading of the Constitution as a whole as it was evident from the very meaning of the word "amendment". According to him, what could emerge out of an amendment was only an altered form of the existing Constitution and not an altogether new and radical Constitution.

This interpretation, as Sudhir Krishnaswamy has shown, in some depth, in his book, *Democracy and Constitutionalism in India*, is compelling for at least two reasons. First, it represents a careful reading of the text of Article 368, and, second, it delivers an attractive understanding of the moral principles that anchor the Constitution. Article 368 grants Parliament the power to amend the Constitution, making it clear that on the exercise of that power "the Constitution shall stand amended". Therefore, if what has to remain after an amendment is "the

Constitution", naturally a change made under Article 368 cannot create a new constitution. Such a construal is also supported by the literal meaning of the word "amendment", which is defined as "a minor change or addition designed to improve a text". Hence, for an amendment to be valid, the constitution that remains standing after such a change must be the Constitution of India; it must continue to possess, in its essence, those features that were foundational to it even at its conception.

Now, consider Conrad's extreme example: were an amendment to be introduced relinquishing control over India to a foreign power, would it not result in the creation of a constitution that is no longer the Constitution of India? Would not such an amendment strike at the root of the Constitution's Preamble, which, in its original form, established India as a sovereign democratic republic? On any reasonable analysis it ought to, therefore, be clear that the basic structure doctrine is not only grounded in the Constitution's text and history, but that it also performs an important democratic role in ensuring that majoritarian governments do not destroy the Constitution's essential character.

We must remember that constitutions are not like ordinary laws. Interpreting one is always likely to be an exercise fraught with controversy. But such is the nature of our political design that the court, as an independent body, is tasked with the role of acting as the Constitution's final interpreter, with a view to translating, as Justice Robert H. Jackson of the U.S. Supreme Court once wrote, abstract principles into "concrete constitutional commands". It may well be the case that the basic structure doctrine is derived from the abstract. But that scarcely means it doesn't exist within the Constitution.

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Afghanistan at a crossroads

Any agreement between the Taliban and the U.S. at the expense of the Afghan government and people is doomed to fail



DAVOOD MORADIAN

Afghanistan is seeing growing national, regional and global attempts to seek a peaceful settlement to the conflict. The U.S. is desperate to extricate itself from the war, heightened by an unpredictable President and an ambitious negotiator, Zalmay Khalilzad. This desperation is matched by growing fears in Afghanistan that the Taliban will seek to overthrow the government, as it did in 1994, and that the government, the political class and the democratic constituency will be betrayed by a hasty deal between a desperate U.S. and an overconfident Pakistan. Desperation, fear and hubris may produce a peace agreement, but such an agreement may not bring inclusive and sustainable peace.

Key questions

Addressing the main drivers of the conflict are the principal tenets of any sustainable peace settlement. The causes of the Afghan conflict are religious, ethnic and external in nature. The conflict has been fought over the identity, legitimacy and sovereignty of the Afghan state and society: Should it be a Pashtun-dominated entity or a pluralistic state? Is an Islamist/theocratic emirate a true identity of

the nation or a constitutional republic? Should it be a puppet state of Pakistan or a sovereign and independent state? Should it be a representative or plutocratic state?

There have been numerous peace-making efforts and agreements since the beginning of the conflict in 1979. The leftist Najibullah Ahmadzai, the Mujahideen-led government of Burhanuddin Rabbani, and the Western-installed governments of Hamid Karzai and Ashraf Ghani all pursued political settlements based on the principles of power-sharing and democratic governance but failed.

Since its formation in 1994, the Taliban has remained consistent in its ambition of total victory and establishing "a pure Islamic government". The Taliban is not primarily a nationalistic insurgency fighting a foreign occupation, but an ideological movement determined to re-establish a political order that is in alignment with Pakistan's geo-strategic ambitions. The presence of international troops is an obstacle to the Taliban's goal.

The key questions are (a) whether the Taliban's goal of establishing a "pure Islamic government" is compatible with the principles of pluralism, power-sharing and election-based politics; (b) whether Pakistan will accept a sovereign, independent Afghanistan; (c) whether the potential peace settlement is to be built upon the fragile achievements in the fields of state-building, democratisation, pluralism and connectivity; and (d) whether there will be an effective guarantee and me-



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chanism for ensuring the sustainability of any peace agreement.

The role of the U.S.

In March 1979, the U.S. began covertly supporting the Mujahideen via and with Pakistan through 'Operation Cyclone'; it has remained a party to the conflict ever since. However, the U.S.'s Afghan policy has been driven by instinct rather than deliberation. Its current peace efforts are mainly driven by Washington's selfish instincts and ever-changing moods rather than the realities on the ground, particularly the role of the Afghan government and people. U.S. President Donald Trump follows his predecessors in changing the goalposts from conditions-based engagement to cater to the U.S.'s domestic impulses and/or emerging geopolitical attractions.

Neither the current military environment nor the political structure is conducive for a sustained peace process. Unlike the Afghan and the coalition forces, the Taliban is not militarily and politically exhausted and/or desperate. The leadership of the Taliban and their Pakistani enablers have more sta-

mina, resources and reasons to be hopeful of total victory. Their confidence has been reinforced by the Trump administration's 'all bark no bite' approach in dealing with Pakistan.

The Afghan presidential election, in which 17 candidates from different political backgrounds have registered to compete, is scheduled to take place in July. The speedy talk between the U.S. and the Taliban has created a parallel process in competition with the planned presidential election. Many in Kabul rightly fear that the U.S. may sacrifice Afghanistan's nascent democracy and sovereignty to attain its objectives.

Any agreement between the Taliban and the U.S. at the expense of the two principal stakeholders – the Afghan government and the people – is doomed to fail. The Afghanistan of 2019 is fundamentally different from the Afghanistan of the 1990s. Despite many shortcomings, the state of Afghanistan enjoys significant capacity and legitimacy and is endowed with a formidable and growing national security force. On the other hand, both Pakistan and the Taliban remain despised and distrusted by an overwhelming majority. In 2018, the Asia Foundation's annual Afghanistan survey and the nationwide survey conducted by the Afghan Institute for Strategic Studies found that over 90% of the population do not support the Taliban's cause.

In the words of the Taliban, Afghanistan is "the school of jihad" for jihadists around the world.

Therefore, any arrangement with the Taliban would have direct implications for other violent Islamist groups. Separating the Taliban from wider global Islamist movements is the product of Western political duplicity and intellectual naivety.

A trilateral agreement involving Pakistan, the U.S., and the Taliban's Quetta Shura will not be acceptable to other stakeholders in Afghanistan and the region. Inclusivity, realism, sustainability and Afghan ownership should drive the efforts for the peace settlement. For this to succeed, India should join other like-minded and concerned stakeholders to ensure that Afghanistan moves forward rather than be forced to return to the dark age of the 1990s.

The people of Afghanistan want a peaceful, pluralistic and prosperous country. The Taliban can have a role and a place in building and living in such a polity, similar to other Afghan citizens or political groups. A peaceful and prosperous Afghanistan, a peaceful and developed region, and the defeat of the ideology of violent Islamist groups are all interlinked.

But the people of Afghanistan should not be forced to choose between an imposed peace or independence and a constitutional order. An imposed peace will achieve brief victory for one party, but cause long-term suffering and will eventually break down.

Davood Moradian is Director General, Afghan Institute for Strategic Studies, Kabul

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.

Detained in the U.S.

It is unfortunate that some students and their agents are spoiling the name of India by resorting to fraud and unethical means in getting U.S. student visas (Page 1, "U.S. visa fraud: India demands release of students", February 3). A student visa to the U.S. is much coveted as it opens the door to quality education and, possibly, a well-paying job. This has led unscrupulous individuals, sometimes in collusion with institutions, to defraud the system. It is necessary for parents and students to be vigilant and not give room to acts that

bring disrepute to the country and the system.

D.B.N. MURTHY,
Bengaluru

The CBI gets a Director

The controversy over the selection of the new CBI Director is a continuation of the cold war that refuses to dissipate over the posting of a Director to head the premier investigating agency as well as the intransigent stand of the government, which is bent upon having its own way irrespective of the consequences of not having an independent institution.

V. PADMANABHAN,
Bengaluru

The dissent by Congress leader Mallikarjun Kharge is not surprising as he, just like his leader and Congress president Rahul Gandhi, will always be dissenting, attacking and accusing the government on everything that it does. When the Chief Justice of India was also one of the committee members who cleared the name of the new appointee, Mr. Kharge's dissent has no value.

V.S. GANESHAN,
Bengaluru

Guide to leadership

One of the essential qualities that our leaders should have is the ability of succession planning ('ColumnWidth'

page, "What qualities should we expect from our leaders?", February 3). In most of our political parties, the assumed and presumed next lines of leadership are family members of leaders. In certain cases, it is a case of "After me, the deluge". Leaders in all spheres should have the acumen, foresight and selfless courage to encourage and develop the best among their followers to take up their mantle when the situation warrants this. For this to happen, we must have leaders with unimpeachable integrity, rectitude and patriotism. Unfortunately, India has seen

leaders equating themselves with the country.

C.G. KURIAROSE,
Kothamangalam, Kerala

Herbal formulation

The report on the siddha drug, *Nilavembu kudineer*, showing antiviral activity and immunomodulation was interesting ('Science & Technology' page, "Nilavembu kudineer kills dengue virus, protects from chikungunya", February 3). If anything, it reinforces a fact of singular importance in medical research – the urgent concerns of clinical care and the 'trial and error' experiences that these concerns beget that have

been the source of several great medical discoveries. Ancient medical texts can serve as a rich repertoire of such researchable, if not employable, clinical experiences. The Nobel-winning discovery of the anti-malarial drug, artemisinin, had as its source a 2,000-year-old clinical experience documented in a treatise of traditional Chinese medicine. It is heartening to see that our researchers too are working on indigenous drugs to verify and establish their efficacy.

D. G.L. KRISHNA,
Bengaluru

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