



Beyond recompense

Act against police officers who framed scientists in the ISRO spy case

The 'ISRO espionage case' marked a disgraceful chapter in the history of police investigation in the country. The presence of a Maldivian woman in India became the pretext for a police witch-hunt against scientists belonging to the Indian Space Research Organisation in 1994. Three scientists were arrested on the grave charge of sharing official secrets related to space technology and launch missions with foreign agents. The order, mercifully, lasted only for a short time, as the investigation shifted from the Kerala Police to the Central Bureau of Investigation after a few weeks. The CBI recommended closure of the case, citing complete lack of evidence and pointing to grave lapses in the police probe, which also used questionable methods and proceeded on nothing but suspicion. Ever since the proceedings were dropped, one of those arrested, S. Nambi Narayanan, has been battling for the restoration of his honour and dignity. The attitude of the Kerala government has been obstinately ungracious. It opposed the CBI's closure report and made a peevish attempt to revive the investigation by its own police. It has been unsympathetic to the demand for action against its errand police officers, arguing petulantly that there is no court direction to take disciplinary action against them. The latest Supreme Court order, forming a committee headed by a retired Supreme Court judge to consider ways to take action against the officers, addresses this glaring inadequacy in the process of restorative justice for those maliciously arrested. The prosecution of these officers is long overdue.

The court has reaffirmed the principle that compensation is a remedy for the violation of human rights. But the so-called espionage case remains a study in the crude and archaic methods used by the police. For a country where it is not uncommon for those arrested for heinous offences to be exonerated after long years in prison, it is possible to argue that the compensation principle may open the floodgates for innumerable claims. The only way to avoid such a situation is to have a proper oversight mechanism to ensure that all investigation into crimes and complaints remains lawful. While granting ₹50 lakh to Mr. Narayanan, the court has taken note of his wrongful imprisonment, malicious prosecution and humiliation. While his honour and dignity were restored long back, the delay in a consequential inquiry into the conduct of the police officers concerned is disconcerting. Justice is not only about relief and recompense, and should extend to action against those at fault too. Much of the blame must fall on the Kerala government, which did not muster the courage to proceed against its police personnel.

Power games

Policy makers, not courts, should take charge to resolve structural issues in the power sector

The Supreme Court has ordered a stay on the Reserve Bank of India's February 12 circular asking banks to recognise loans as non-performing even if repayment was delayed by just one day, and resolve them within 180 days. If banks failed to comply with the RBI's new rules, these stressed assets had to be forced to undergo swift insolvency proceedings under the new Insolvency and Bankruptcy Code (IBC). This comes just weeks after the Allahabad High Court refused to grant relief to troubled power companies facing action from the RBI. The apex court's decision to overturn RBI rules and transfer all pleas seeking exception from them to itself is clearly the biggest challenge against the IBC yet. It is likely to cause significant uncertainty in the resolution of stressed assets and undermine investor confidence in the bankruptcy process. The postponement of the Supreme Court's next hearing of the case to mid-November will send the signal that in contrast to hopes that asset resolution under the new bankruptcy regime would be done within a strict time frame, there are likely to be considerable delays in the resolution of stressed assets. Distressed power companies, and a number of other firms in the shipping, sugar and textile sectors, however, will be relieved as they are spared from bankruptcy proceedings for now. According to the Association of Power Producers, the Supreme Court's order will save stressed companies producing 13GW worth of power from being pushed to the doors of bankruptcy courts. Banks, too, will be happy as the reprieve will help them delay the recognition of bad loan losses.

The Supreme Court's decision to intervene, however, will do very little good in the long run to either stressed power companies or their lenders. The troubles of power companies can be traced to structural issues such as the absence of meaningful price reforms, unreliable fuel supply and the unsustainable finances of public sector power distribution companies. Banks, on the other hand, are unlikely to make much money out of these stressed assets until these structural problems are sorted adequately to attract investors. Policymakers, not courts, need to take charge and resolve these issues. That said, the current insolvency resolution process is not without its flaws. According to a report released by the Insolvency and Bankruptcy Board of India earlier this month, lenders could realistically expect to recover less than a tenth of their dues if stressed assets are to be liquidated. This could be attributed to the IBC's overemphasis on the speedy resolution of bad loans over the recovery of maximum value from stressed assets. Not surprisingly, several power companies emphasise that their assets could yield better returns if the issues are resolved completely outside the purview of the IBC. The Supreme Court's decision has now provided lenders the chance to test this argument.

India's shrinking democratic space

The BJP's dystopic national vision jeopardises the future of our republic



MALINI PARTHASARATHY

With less than a year to go before we head into general elections in the summer of 2019, it is becoming evident that this will be no ordinary electoral contest between the BJP and the rest because what is at stake is the future of our democratic republic.

It seems that a pivotal moment in our political life is approaching, with the BJP and its allied organisations embarking on a strategic course that is far more ambitious and combative than in 2014, seeking as it does to alter the fundamental postulates of the democratic framework of the Indian nation.

As Indians, we are justly proud of the structure of our governance and our Constitution which has ensured that India is both a democracy and a republic. This powerful and well-articulated constitutional link between democracy and republic has entrenched all citizens as equal stakeholders in this nation state.

The Constitution, which came into force in 1950, had ensured that Indian citizens were given a set of inviolable freedoms, including equality before the law and freedom of expression.

An inheritance in peril

It is this democratic inheritance which is now in peril, with the BJP signalling a willingness to depart from the traditional moorings of governance. The ruling party and its Hindu nationalist affiliates are becoming increasingly vocal in the public sphere in their questioning of the foundational principles of our democratic framework, airing afresh pre-independence Hindu nationalist doctrines that question the basis of India's composite nationhood.

Meanwhile, the trend of the Modi administration's policy responses and actions in recent months suggests a stronger tilt towards im-

plementing the original agenda of Hindu nationalism, by making policy moves that seek to unsettle the governing consensus on nationhood and citizenship.

The edgier tone of the policy statements emanating from the party's top leadership, particularly its president, Amit Shah, indicate that the BJP is preparing for a more combative political strategy. In the recent meeting of the BJP National Executive, Mr. Shah asserted the party's determination to not only win 2019 but rule "for the next 50 years".

The purpose of the BJP's recent political moves on the Citizenship Act, on the controversial concept of the National Register of Citizens (NRC) and on the special status of Jammu and Kashmir is to challenge the prevailing governing consensus on key issues such as citizenship and the relationship of various States to the Union. All these moves would add up to a fundamental rewriting of the rules of engagement between the Indian nation and all other players, be it citizens, constituent States, or communities.

Under Prime Minister Narendra Modi, the government is taking decisive steps on fulfilling several of its core Hindu nationalist doctrinal commitments. Its policy articulations on citizenship, on the status of J&K, and its strident public campaign against intellectuals and civil society activists, branding them as "urban Naxals", are all signposts of a new political culture that is sought to be forcibly entrenched in our public space.

Yet, neither the Congress nor other opposition parties acknowledge emphatically that what is really unfolding in the political arena is a fundamental contest between the original pluralist vision of Indian democracy and the monocultural and exclusivist view of the Hindu nationalists. These parties do not seem to have grasped the deeper pattern of interconnected trends unfolding behind the policy steps taken by the Modi administration with the encouragement of the ruling party.

When the Modi-led National Democratic Alliance government assumed power in 2014, its initial ap-



proach to historically sensitive issues such as Kashmir and minority groups was cautious. It also appeared eager to prove its governing capability and demonstrate a willingness to adhere to the Constitution. Mr. Modi was quick to show his disapproval of the mob violence and the cow vigilantism of right-wing groups that erupted brazenly after its assumption of power.

The gloves are off

But now the BJP appears determined to take its gloves off, eager to wade into controversial issues such as the status of J&K and the Citizenship Act. By explicitly placing these issues that relate to citizenship and community rights at the top of the party's national political agenda, it is clearly readying for elections.

Government officials and party spokespersons are becoming explicitly combative on the concept of special rights for Kashmir. They are unapologetic on the controversy in Assam over the agony of genuine citizens who find their names missing in the new NRC. Underpinned by the strong public criticism, party and government leaders continue to affirm enthusiastically their commitment to the government's proposed Citizenship (Amendment) Bill of 2016.

This proposal, which blatantly omits Muslims from the list of communities in the South Asian neighbourhood who are invited to take Indian citizenship, has been widely condemned as unconstitutional because of its exclusivist intent, violating Article 14 mandating equality before the law.

In recent months, the situation in the Kashmir Valley is at its inflamed worst, with the political process having collapsed as Gover-

nor's Rule has been imposed. After the breakdown of the alliance with the PDP in June, the BJP has reverted to its traditionally hard-line position on the status of J&K, questioning the special provisions designed to protect its conditional accession to the Union.

Article 370 of the Indian Constitution as also Article 35A were historical commitments to the State of Jammu and Kashmir based on the conditional terms of the Instrument of Accession in October 1947. Given that J&K's adherence to the Indian Union remains vulnerable to external challenge, it is evidently bad strategy to embark on a confrontational course in respect of the special provisions designed to protect its status in the Union.

Therefore, inexplicable are the loud musings from senior officials in the Modi government such as the National Security Adviser, Ajit Doval, reportedly calling the idea of a separate Constitution for J&K an "aberration". Also provocative was a BJP-sponsored challenge in the Supreme Court to the validity of Article 35A. Such a stand-off, while it possibly thwarts the prospect of a revival of a peace process in the State, benefits the BJP politically, as the hard-line stance is bound to appeal to its hard-core Hindu nationalist supporters.

Likewise, the pronouncements of Mr. Shah at the recent BJP National Executive meeting on Assam, the issue of illegal migrants, the NRC controversy and the Citizenship Amendment Bill underlined the party's determination to press ahead with its polarising strategy. The political resolution adopted at the meeting echoed Mr. Shah's assertions.

The resolution called the publication of the NRC "a monumental work in securing the cultural, economic and demographic interests of the state as well as the national security interests of India". Further, militating against the global trend of humanitarian sympathy for the plight of the Rohingya, the resolution says the BJP National Executive "compliments the Modi government for its determination in weeding out the infiltrators, whether Bangladeshi or Rohingya".

The Supreme Court transformed

The 'Navtej Johar' judgment has created the conditions to dismantle gender biases in diverse ways



JAYNA KOTHARI

The decriminalisation of homosexuality in the *Navtej Johar* judgment holds special relevance for transgender rights. Not only was Section 377 used disproportionately against transgender persons, the legal battle also took a new and positive turn from 2014 after the Supreme Court recognised the right to gender identity in *NALSA v. Union of India*. Therefore, it is only fitting that we bestow some attention to the contributions of the trans community to this outcome and examine how the judgment takes transgender rights forward.

Step by step

When the Supreme Court in 2013 passed the *Koushal* judgment, overturning the Delhi High Court judgment reading down Section 377 in *Naz v. Union of India*, the LGBTQ community faced a huge

setback. The silver lining, however, was that the LGBTQ movement on the ground was growing rapidly, with social acceptance for LGBTQ concerns increasing. Transgender persons, however, continued to be the most marginalised and vulnerable group within the community. They were routinely arrested and harassed by police, sexually abused, and had to bear the brunt of criminal threats as they were on the streets forced into begging and sex work.

This changed with *NALSA*. In 2014, a bench of Justices K.S. Radhakrishnan and A.K. Sikri passed a judgment holding that transgender persons have the constitutional right to self-identify their gender as male, female or transgender even without medical re-assignment. The Supreme Court held that the rights to life, dignity and autonomy would include the right to one's gender identity and sexual orientation.

With the *NALSA* judgment, there was no looking back. This immediately gave new grounds, and indeed new hope, to revive the Section 377 challenge. In 2016, two fresh petitions were filed under Article 32 of the Constitution:



BISHWANJAN ROUJ

the first by Navtej Johar and others, and the second by Akka Padmashali, Umi and Sana, three transgender activists from Karnataka. Both petitions urged the Supreme Court to reassess the constitutionality of Section 377. This was also the first time that transgender voices were before the Supreme Court.

In 2017 came another big judgment in *Puttaswamy v. Union of India*, in which the Supreme Court said that there is a constitutional right to privacy inherent in the right to life, equality and fundamental freedoms. It went on to hold that the right to privacy specifically includes the right to have intimate relations of one's choice and the right to sexual orientation

and gender identity, and that the *Koushal* judgment was incorrect.

After *Puttaswamy*, more petitions and interventions were filed against Section 377. Finally, the Supreme Court, in a five-judge Bench led by the Chief Justice of India, unanimously held in *Navtej Johar* that Section 377 was unconstitutional to the extent that it criminalises consensual relationships of any kind between adults, and overruled *Koushal*.

The impact of the *Navtej Johar* decision is unprecedented. Justice D.Y. Chandrachud recognised that Section 377 had consigned a group of citizens to the margins and was destructive of their identities, and held that lesbians, gay, bisexual and transgender persons have the constitutional rights to full and equal citizenship and protection of all fundamental rights.

Different minorities

The most far-reaching contribution is the elaboration on the right against non-discrimination on the basis of sex, guaranteed in Article 15 of the Constitution. The Supreme Court confirmed that as held in *NALSA*, 'sex' under Articles 15 includes discrimination on the

ground of gender identity. It went even further to say that discrimination on the grounds of 'sex' would also include discrimination due to sexual orientation or stereotypes. This means that being gender non-conforming or not adhering to society's 'norms' of gender roles, be it in the way you dress, speak or behave, cannot be a ground for discrimination. The main reasons for violence against trans persons is that they do not conform to gender roles. This inclusion of discrimination on the ground of sex stereotyping will go a long way in dismantling gender stereotypes not just for the LGBTQ community, but also for women.

In this way, with the *Navtej Johar* judgment, the court has gone far beyond the anti-sodomy judgments from around the world that were referred to it. By recognising these twin aspects of gender identity and sexual orientation, the court acknowledges the voices of the most vulnerable sexual minorities within the LGBTQ community and takes the stand that the Constitution protects the rights of all.

Jayna Kothari is founder of Centre for Law and Policy Research

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.

Vijay Mallya's claim

Vijay Mallya has become yet another reason for the Congress and the BJP to indulge in a blame game ("Row as Mallya says he met Arun Jaitley", Sept. 13). While the Congress is seeking an explanation from the Finance Minister on his meeting with Mr. Mallya, the BJP is blaming the Congress, for it was during the UPA time that loans were sanctioned to Mr. Mallya. All of this only distracts people from real issues such as rising fuel prices. It keeps their attention away from the BJP's unfulfilled promises, while for the Congress, this is a way of gaining

sympathy before the Lok Sabha election. Both parties are only making us, the people, look like fools. ISMAIL MULLA, **Kannur**

For Vijay Mallya to simply make the sensational claim of meeting the Finance Minister without divulging what conspired between them is pointless. K.R. SRINIVASAN, **Secunderabad**

Fuel price hike

First we had to face the problems caused by demonetisation; now it is the shock of fuel prices ("No Band-Aid fix for fuel prices", Sept. 13). The

Prime Minister, who is so vocal on so many issues, is keeping a studied silence on the falling rupee and the hike in fuel prices. Other Ministers seem to be watching the situation and hoping that it will go away on its own. There appears to be no seriousness in tackling the issue. We need to plan for conservation of fuel and find alternative sources of energy. D.B.N. MURTHY, **Bengaluru**

Despite the increase in fuel prices, the queues outside petrol bunks are as long as before. Instead of crying foul over surging oil prices, would it not be prudent for

us to introspect on how to reduce fuel consumption? Why are we not prepared to walk a km or ride a bicycle instead of driving our cars even to the next street? S. VAITHIANATHAN, **Madurai**

Alarming suicide rate

Visiting a therapist or a psychiatrist has been a taboo in India for a long time ("37% of women dying of suicides are Indians," Sept. 13). People see the act of meeting a therapist as a sign of incapability. This has to change. Many lives can be saved by just talking to a person who is trained to handle complex emotions and who can

guide people in the right direction. It is particularly unfortunate that so many women are taking their lives. Perhaps it is because we are living at a time when women are more empowered than ever before and are working, yet they continue to do most of the household work. This

combination causes immense stress. We need to be careful about what we value the most in life and how much, so that even if we lose that, we don't lose ourselves. ELORA SATYA, **Hyderabad**

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CORRECTIONS & CLARIFICATIONS: In the report headlined "Army mulling increasing retirement age of jawans" (Sept. 12, 2018), in the opening sentence - "The Army is considering a proposal to increase the retirement and pensionable age of jawans in service ... in a phased manner" - instead of *age* it should have been *years of service*.

It is the policy of The Hindu to correct significant errors as soon as possible. Please specify the edition (place of publication), date and page. The Readers' Editor's office can be contacted by Telephone: +91-44-28418297/28576300 (11 a.m. to 5 p.m., Monday to Friday); Fax: +91-44-28552963; E-mail: readerseditor@thehindu.co.in; Mail: Readers' Editor, The Hindu, Kasturba Buildings, 859 & 860 Anna Salai, Chennai 600 002, India. All communication must carry the full postal address and telephone number. No personal visits. The Terms of Reference for the Readers' Editor are on www.thehindu.com