



## Great expectations

Ending commercial surrogacy will not be possible without regulating ART clinics

It is a truth, universally acknowledged, that surrogacy needs to be regulated by law. There is no argument about whether an issue such as surrogacy fraught with bioethical issues aptly requires regulation: it does. The Surrogacy (Regulation) Bill, 2019, should have come a long time ago. Regulations in the past in the area of child adoption and transplantation of human organs have, historically, borne fruit, effectively putting an end to rampant commercial transactions, and providing a structure by which any excursions outside of the law may be shut down. Flagrant violations of human rights have been witnessed repeatedly in the 'baby-making factory' in India, the underprivileged woman often in the cross hairs, and at the bottom of the pile. The plethora of unregulated assisted reproductive techniques (ART) clinics that mushroomed, coinciding with India becoming a global health-care destination, ensured that there was a good volume of traffic toward the country, besides growing domestic demand for surrogacy services. In this context, there is expectation that the Surrogacy Bill will regulate commercial surrogacy, while allowing an altruistic form of it to continue, by putting in place strict supervisory and regulatory frameworks. The question here is whether the Bill, recently passed by the Lok Sabha, will serve the wholesome purpose of regulating the vastly complex area of surrogacy, while sensitively balancing the needs of 'intending parents' and surrogates.

The Bill mandates payment to the surrogate mother, who can only be a 'close relative', to the extent of covering medical expenses and providing insurance during the term of the pregnancy. It has specified that 'exploiting the surrogate mother' would attract punishment of imprisonment of up to 10 years and a fine of up to ₹10 lakh; advertising for surrogacy and selling/importing human embryos or gametes for surrogacy also attract the same punishment. It has mandated registration of surrogacy clinics, and put in place regulatory boards to ensure compliance with the law. But its critics have panned it for the lack of specifics in definitions (the generalised 'close relative' criterion for surrogates); the exclusion of various groups of people from access to surrogacy (only married couples of a certain age group are eligible); and primarily, of trying to put the 'cart before the horse' by seeking to regulate surrogacy before setting the ART house in order. The capacity of the state to end commercial surrogacy may itself be compromised if it does not first set up a regulatory framework for ART clinics, which provide the basic technology for surrogacy. Else, the government is merely setting itself up to implement a law that may spectacularly fail. That would be a tragedy, because this is one law that is pregnant with the possibility of truly revolutionising the surrogacy sector, cleaning it up, and fulfilling the dreams of people who are themselves unable to bear children.

## Open obsession

An ingrained gun culture and patchy regulations set off hate crimes in the U.S.

Two American cities, El Paso, Texas, and Dayton, Ohio, more than 2,500 kilometres apart, witnessed lethal shootings resulting in mass fatalities over the past weekend, with at least 31 people dead, many injured, and a nation in shock. The El Paso attack, which bore tell-tale signs of a hate crime, was the deadliest mass shooting in the United States since November 2017 and brings to 32 the tally of shootings there in 2019 that had at least three victims. In his reaction to the shootings, U.S. President Donald Trump appeared to denounce the racist intention behind the shooting when he said, "In one voice our nation must condemn racism, bigotry and white supremacy," and that these "sinister ideologies must be defeated." While he was not wrong to highlight the pervasive threat of racist violence — police investigating the El Paso shooting said they found an anti-immigrant document espousing white nationalist and racist views, which they believe was written by the suspect, Patrick Crusius — his focus on violent video games, mental illness and online bigotry leaves a glaring gap in policy: common-sense gun control reforms to curb the proliferation of deadly, military grade weapons and high-capacity magazines.

The battle to pass broad, effective gun control legislation, such as tougher background checks for gun buyers and the banning of certain gun technologies and accessories such as bump stocks that exponentially raise the lethality of weapons, has punctuated the past few decades of America's unrelenting, 228-year-old love-affair with guns. Despite sustained lobbying to push forward basic gun control laws through the U.S. Congress — former President Obama saw no fewer than 17 of his attempts to bring gun control to the floor of Congress defeated by conservative lawmakers — the constitutional right to bear arms has never been more fiercely defended. Further Mr. Trump's regular dog whistles to the forces of racist xenophobia appear to have emboldened fringe elements within the gun-loving fraternities to carry out mass attacks against minorities. The National Rifle Association quietly hands around \$6 million annually to lawmakers in Washington to retain its pro-gun agenda as a top priority. Pro-gun lobbies consistently mobilise voters around the Second Amendment. The result of combining this ingrained "gun culture" with patchy gun regulations is ever more incidents of mass shootings. The societal and economic challenges that minorities face in the U.S. are already immense; if they become targets of a new vector of racist hatred, buttressed by the unregulated firepower of guns, then America's "melting pot" dream will unravel fast.

# Kashmir has been cut to the quick

The Centre is riding roughshod over Kashmiri public opinion already beset with disaffection



WAJAHAT HABIBULLAH

In the face of a massive security build-up in Kashmir at the close of July, a seasoned journalist conjectured, "This is just the right time when militants and their masters in Rawalpindi could do with a terror attack in Kashmir." Such were the arguments trotted out by experienced media persons in seeking to account for the extraordinary lock down that had descended on Kashmir throwing its citizens into a panic, with a run on banks, petrol pumps and stores across the Valley. I began receiving phone calls from friends and associates as far as Gopalpora, Mattan and Doabgah and Sopore asking what was happening. My former colleagues in government, some in key positions, had no inkling and made dire predictions.

### A steamrolling

And then he had the statement of the Home Minister, Amit Shah, in the Rajya Sabha on the morning of Monday August 5, 2019. Under Article 370 of the Constitution of India, the State of Jammu and Kashmir had its own Constitution and its own laws, with the President of India empowered to decide which provisions of the Indian Constitution would be applicable within the State, but only with the assent of the State.

In one fell swoop, the President, Ram Nath Kovind, declared that all provisions of the Indian Constitution shall now apply to the State, thus nullifying Article 370 with the use of that same article thereby ending the special autonomous status of Jammu and Kashmir that it had enjoyed since the promulga-

tion of India's Constitution. The Jammu and Kashmir Reorganisation Bill 2019 further bifurcates the State of Jammu and Kashmir into two Union Territories, both with a Muslim majority namely: the Union Territory (UT) of J&K and the Union Territory of Ladakh. While the UT of J&K will have a legislature, the Union Territory of Ladakh will be without one. Although in the past UTs have been upgraded to States, never has a State been downgraded, thus bringing to a consummation the process initiated with the accession, although hardly in the manner dreamt.

### Umbilical link

Article 370 has governed the accession and relationship of the princely State of Jammu and Kashmir with India under the Indian Constitution. As originally envisaged, Article 370 formed the basis of Kashmir's special and autonomous status. Mainstream political leaders such as Farooq Abdullah, Mehbooba Mufti and others have warned that revoking Article 370 will mean a break in the relationship between the State and India.

A devout Muslim, the then unchallenged Kashmiri leader, Sheikh Abdullah (Baba-i-Qaum to his people), 'faced a clear choice in 1947; he could join a Muslim nation or he could join a secular state, where Kashmiris would be free to live a life of their own choosing. In making his choice, India's Prime Minister Jawaharlal Nehru was the Sheikh's reassurance. Of Kashmiri descent, a heritage that Nehru cherished, Nehru had an inclusive vision of what India was to be'. By contrast, the leader of the newly emerging nation of Muslims, Mohammed Ali Jinnah, was a cold and distant figure, a modernist who could excite awe but little affection. At the time of accession, the portion of the State where Jinnah's Muslim



League had its support lay not in the Kashmir Valley but across the Pir Panjal, in Mirpur and the old Poonch principality of the feudal State of Jammu and Kashmir, an area a large part of which Pakistan occupies today and calls 'Azad Kashmir'.

It is important to remember that the Kashmir freedom movement was a movement to rid Kashmir of despotism, working in tandem with the national movement but not part of it. This was primarily a Kashmiri movement drawing almost universal Kashmiri support in a Muslim majority State where the Kashmiris were the largest single ethnic group. Despite efforts by Maharajah Hari Singh's Prime Minister Ram Chandra Kak in eliciting the Sheikh's support for independence, the latter stood steadfast in his demand for an end to the monarchy.

Visiting Srinagar on June 18-23, India's Viceroy Lord Louis Mountbatten urged Hari Singh not to make a declaration of independence. He conveyed Sardar Vallabhbhai Patel's message that 'the States Department was prepared to give an assurance that, if Kashmir went to Pakistan, this would not be regarded as unfriendly by Government of India'. It was only when Jammu and Kashmir forces faced an uprising by the Poonch troops of the British Indian Army's decommissioned Sixth Punjab Regiment (in the border district of Poonch), and then a military rout by invading frontier tribesmen in the State's border town of Domel on October 22, 1947 that the Maha-

raja turned in desperation to India.

### Pakistan's lost cause

According to the 1941 Census, 77.11% of the population of Jammu and Kashmir was Muslim, 20.12% Hindu and 1.64% Sikh. Pakistan has argued that the logic of Partition meant that the State had to be a part of Pakistan. But by recourse to an invasion by Pakistan's frontier tribesmen and the support of the invasion by Pakistan's armed forces, Pakistan virtually lost its case, certainly in the eyes of Kashmiris. India's case rested on the public will. Indeed, Sheikh Abdullah spoke for Kashmir at the United Nations in February 1948 as part of a delegation led by N. Gopalaswami Ayyangar firmly declaring, "We shall prefer death rather than join Pakistan. We shall have nothing to do with such a country." And it was this freedom within the Indian Union that Abdullah sought through the constitutional guarantee of Article 370, which read with Article 369, provided temporary powers to Parliament to make laws for J&K.

Under sub-section 3 of this Article, the President of India can revoke Article 370 only on advice from the Constituent Assembly of Jammu and Kashmir. The Constituent Assembly was dissolved in 1957, and replaced by a Legislative Assembly, which was dismissed last year after the coalition between the Bharatiya Janata Party (BJP) and the Jammu and Kashmir Peoples Democratic Party collapsed and the Governor Satya Pal Malik rejected a bid for an alternative coalition. Importantly, the current Presidential order modifies Article 367 of the Constitution, with "Constituent Assembly" to be read as "Legislative Assembly of the State" and the State government construed as the Governor. This has enabled the President to abrogate Article 370 with the con-

sent of the Governor as consent of the State. The people themselves, who the Constitution is designed to serve, therefore, had no part in this process. The constitutional validity of these amendments are for the Supreme Court to ponder. But the question here is that if these are indeed designed to benefit the people, was it necessary to bring them before Parliament under stealth, with the leaders of mainstream parties, the former Chief Ministers the Abdullahs (father and son), Mehbooba Mufti and the BJP's ally Sajjad Lone all under house arrest?

### Opaque moves

There is little doubt that these are bold constitutional measures described with contrasting adjective or invective, consummating a process that began with the Constitution of India. But if the view of government was simply to rectify a constitutional error or remedy an anachronism as claimed by assiduous government spokesmen, did it not follow that democratic compulsion required that it be placed before the public most affected — the people of J&K, — before being sneaked into Parliament in tight secrecy? This without the knowledge of even the local government amidst security measures unprecedented in their intensity, surpassing even those that the Jagmohan government was forced to take following the outbreak of insurgency in 1989-90? This endeavour has meant riding roughshod over Kashmiri public opinion already beset with widespread disaffection. What it has succeeded in doing is leading to a feeling of betrayal among a section of our people and foreboding among well wishers of Kashmir.

Wajahat Habibullah, a retired civil servant, has served as Chief Information Commissioner and Chairperson of the National Commission for Minorities

## The pitch for a second term

The Trump strategy seems to focus on internal progress and in pursuit of peace abroad in unconventional ways



T.P. SREENIVASAN

Today, there is expectation that U.S. President Donald Trump will not only complete his term but also win a second term in 2020. But not so long ago, the demand to impeach Mr. Trump on the charge of Russian interference in the U.S. presidential electoral process arose within weeks after his largely unexpected victory in 2016. Many believed he would not complete his term as accusations gathered momentum, which culminated in the Mueller report — it had enough material to indict the President. The Presidency came close to one constitutional crisis after another, but the President used the same report to claim there was no collusion or cover-up.

While the Democratic challengers to the President have multiplied with each passing day there are no serious Republican contenders even though many in the Grand Old Party believe that the President has undermined the party. While age was an issue when Mr. Trump offered his candidature first the same issue is now in the President's favour today as the two serious contenders, name-

ly Democratic candidates Joe Biden and Bernie Sanders, are older than him.

### 'America First'

With his majority in the Senate enhanced, Mr. Trump has set aside his fears of impeachment and moved on with his 'America First' policy, internally and externally, marked by his characteristic unpredictability of upstaging friends and enemies alike. The President is busy dealing with weighty matters of state such as trade with China, North Korea, Iran and Afghanistan, and improving the economy. The Democrats are also coming round to the view that it is better to focus on the election than on the impeachment, a move which is bound to fail.

Mr. Biden, who started leading the polls even before he announced his candidature recently, and raised a contribution of a little more than \$6 million in first day fund-raising, has been tainted by his official and personal actions as the Vice President, which include inappropriate pictures and his alleged interference in Ukraine to help a company with ties to his son. The candidature of Pete Buttigieg, who is in a same-sex relationship, and characterised by *Time* magazine as "unlikely, untested and unprecedented" will be another distraction in the months to come.

Unlike his predecessor and Peace Nobel winner, Barack Obama



ma, Mr. Trump has withdrawn U.S. forces from abroad, even from active fronts such as Syria and Afghanistan. In contrast, the National Security Adviser, John Bolton, has been on the warpath, constantly urging the President to use force in different theatres of conflict, especially North Korea. For all his threats of rage and fury, Mr. Trump has not declared war on anyone. Though he has issued a warning that the U.S. is ready to defend itself if Iran threatens its interests in the Gulf or elsewhere (even announcing the deployment of the USS Abraham Lincoln Carrier Strike Group and others to the U.S. Central Command region), the war-monger-in-chief has become a messiah of peace.

### A thread of reform

The regime-changing policy of the U.S. is very much a part of Mr. Trump's global strategy, but he is pursuing a path of reforming world leaders rather than eliminating them. Bluster in words and

peace in action has tempered the image of the President. Though his announcements of withdrawals from international treaties have been swift, he seems to be relying on his bureaucracy to soften the blows. The Paris Agreement commitments have not been reversed pending the formal exit of the U.S., while sustainable energy projects may continue in his second term.

Mr. Trump has gone beyond expectation in the case of India when he exerted pressure on Pakistan to release the Indian prisoner of war, Wing Commander Abhinandan Varthaman, from Pakistan's custody, thus stopping an escalation in conflict during the India-Pakistan stand-off in 2019. Similarly, China was told that the international community would not tolerate inaction anymore in the case of Masood Azhar. In both these cases, Mr. Trump has demonstrated a clear pro-Indian stand *vis-à-vis* Pakistan and China. But when it came to the withdrawal of U.S. troops from Afghanistan, Mr. Trump unabashedly feted Pakistani Prime Minister Imran Khan in Washington in July, promising mediation between India and Pakistan on Kashmir. Russian missiles, Iran and trade imbalance are the irritants in India-U.S. relations.

On China too, the evolving U.S. position appears to be paradoxical. The trade war appears negotiable as there does not seem to be a strategy to strangle China. The way China has relented on the Ma-

sood Azhar issue shows that China is sensitive to the U.S. position. China does not seem to put any pressure on the U.S. when it comes to North Korea. China also does not sense much pressure from the U.S. to contain it in the Indo-Pacific, with the Quadrilateral having receded into the background.

The U.S.'s western allies are expressing concern that Mr. Trump is deviating from foreign policy priorities such as countering China and Russia and instead focussing on nations that pose no real threat to the West such as Iran, Venezuela and Cuba. The Democrats believe that such shifts will damage the credibility of the U.S. with its European allies in the long term as the Europeans are likely to cultivate other powers. Among the countries named as being agitated about the U.S. policy are Turkey, South Korea, Japan and India.

Behind Mr. Trump's perplexing 'America First' policy, there seems to be a clear game plan for the President to secure a second term by focussing on internal progress and peace abroad in unconventional ways, without paying attention to the consequences for the U.S. and the world beyond 2020.

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## 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.

### Kashmir road map

In his book on nationalism, Rabindranath Tagore has said that a nation is not just composed of land and boundaries, but of the people who live there. The same point applies to Jammu and Kashmir. Unless and until the people of Kashmir also wholeheartedly embrace the Indian nation, integration will be incomplete. Today there is a feeling of betrayal in Kashmir as the condition which led to Kashmir's merger with India has been diluted. It is more important to develop trust and confidence so that Kashmir's unique culture, customs and rights are safe from outside influences. To adopt an intransigent attitude that there won't be

alienation and resentment would be incorrect and inappropriate (Editorial page, "Piecing together Kashmir's audacious road map", August 6).

GAGAN PRATAP SINGH, Noida, Uttar Pradesh

■ When you need a million troops and a war-like siege in place to pass an order, the order has already failed. India in Kashmir has failed miserably; the fact that India cares only for the land and not for the people of Kashmir has been reaffirmed. One waits to see whether the highest court of the land will take cognisance of what has happened.

UMER BASHIR Anantnag, Jammu & Kashmir

■ Radically altering Jammu and Kashmir's special status

without political consensus was undoubtedly an exercise in avoidable unilateralism. At the same time, Article 370 metamorphosed into a lodestar to stoke separatist sentiments.

Having crossed the Rubicon, the government will have to address the fears of Kashmiris of the possibility of being swamped by 'outsiders'. It needs to assure the people of Kashmir that a revocation of Article 370 is not an exercise to alter the demographic and religious profile of the state similar to the forced Jewish settlements in the West Bank or the Chinese ethnic re-engineering in its Xinjiang province, except for the return of Pandit families to their original homes.

V.N. MUKUNDARAJAN, Thiruvananthapuram

■ Revoking Article 370 seems to have been done also because of global compulsions such as the re-emergence of the Taliban and statements by the U.S. President. The government must reach out to Kashmir by strengthening grass-roots democracy, holding immediate elections and reverting to full Statehood status after normalcy returns. Were the constitutional changes a valid process? Do the changes have the potential to strain federalism?

PUNYA JYOTI BORUAH, New Delhi

### Amazon policy

This is with reference to the Editorial, "Logged out" (August 1). The size of untouched Amazon forest inside Brazil is larger than

the entire territory of India. I am certain there is understanding what the challenges to protect and ensure the sustainable development of such vast lands entails. With this aim, Brazil has established internationally recognised institutions responsible for the permanent monitoring of the rainforest and a legal system which handles infringements. In this connection, the Minister of the Environment announced last week the strengthening of the capacity to obtain higher resolution satellite images on a daily basis. Brazil, like India, has been working to balance the social, economic and environmental dimensions in its society, which includes the implementation of the Sustainable Development

Goals. Together with Brazil, South Africa, India and China (BASIC), Brazil has been proactive and constructive in negotiations under the United Nations Climate Change Convention. In 2019, the Bolsonaro Government has shown a willingness to engage in new institutional frameworks. In the process of becoming a member of the OECD, Brazil will abide by more than 35 environment-related instruments. In the recent European Union-Mercosur Association Agreement, Brazil has agreed with provisions that will enhance the integration of sustainable development in both trade and investment.

ANDRÉ CORRÊA DO LAGO, Ambassador of Brazil in India

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