



## 377 and beyond

The Centre's cautious stand keeps the focus only on the need to decriminalise gay sex

There is finally good reason to believe that consensual gay sex may once again be decriminalised. The ongoing hearing before a five-judge Constitution Bench of the Supreme Court indicates that there is now a better appreciation of the need for equal constitutional protection to all individuals without any discrimination than was the case in 2013, when a two-member Bench declined to read down Section 377 of the Indian Penal Code as homosexuals constituted only a "minuscule minority". The Centre's stand was believed to be critical when the current hearing began this month. The Union government is cautiously supporting the cause, but it has stopped short of taking a categorical position. By leaving it to the Supreme Court's wisdom to decide on the constitutionality of Section 377, the Centre has signalled it is not opposed to the decriminalisation of same-sex relationships as long as these are limited to consensual acts between adults in private. At the same time, its position is hedged against the possibility that the Constitution Bench, currently re-considering the court's 2013 judgment upholding the validity of Section 377, may venture into other rights for the LGBTQs relating to marriage and inheritance. In the event of the court going into issues and rights that are not slated for reconsideration, it wants to file a detailed counter-affidavit spelling out its stand.

Observations by the judges of the Bench, including the Chief Justice of India, indicate that it is now focussing only on Section 377. However, at least one judge has observed that the question involved was not only one relating to sex, but the right to life and the right to privacy of those in such relationships. The current hearing is taking place against the backdrop of a nine-member Bench's verdict last year in *Justice K.S. Puttaswamy v. Union of India*, which said "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". In other words, a whole gamut of rights flowing from the decriminalisation of homosexual relationships must be examined, if not now, then at least as and when they arise. Obviously worried about the reaction of some religious and conservative sections if homosexuality is decriminalised, the Centre has sought to dissuade the court from going into other related rights. Its apprehension, perhaps, is that once homosexuality is no more an offence, it may lead to demands to legalise same-sex marriages and inheritance by survivorship among gay partners. While the current focus is on the urgent need to overturn the retrograde judgment of 2013 in *Suresh Kumar Koushal*, the extension of constitutional rights to citizens, irrespective of gender and sexual orientation, is long overdue.

## Moon shine

India-South Korea ties have drifted too long — political ownership of them will help

That South Korean President Moon Jae-in undertook a four-day visit to India this week, when there is hectic diplomacy over the Korean peninsula, speaks of his commitment to improving bilateral ties. In fact, during his election campaign last year he had promised to raise bilateral ties to the level of South Korea's relations with what it calls the four major powers: the U.S., Russia, China and Japan. Prime Minister Narendra Modi too has often said he sees South Korea as a significant partner for India, and had travelled to Seoul. But despite the personal touch, and ambitions to align India's Act East policy with Korea's New Southern Policy, ties have drifted for lack of focus. Trade, at \$20 billion, is a fraction of the potential, given that India and South Korea are Asia's third and fourth largest economies. This figure has been a cause for worry, as the two countries had hit the \$20-billion mark in 2011 after the signing of the Comprehensive Economic Partnership Agreement. The large trade deficit in South Korea's favour has led India to be wary of further opening up. In turn, Korean companies cite problems in doing business in India, despite a special "Korea Plus" desk set up by the Prime Minister's Office in 2015. Tourism between the two countries has always been low, and strategically both New Delhi and Seoul are preoccupied with tensions in their immediate neighbourhoods and ties with the big world powers than with each other.

On Mr. Moon's watch, this may change. Both Mr. Modi and he exuded a sense of purpose and there is a clear road map on converging interests. Agreement to invoke the "early harvest" clause in the 2010 CEPA will allow both to do away with tariffs in 11 areas, benefiting Indian seafood exporters and food processing units, as well as South Korean petrochemical companies. The inauguration of Samsung's biggest mobile factory in Noida will bring investment and create jobs in India. More Korean companies should be persuaded to invest, by projecting a counter-narrative to the failed bid by the steel company Posco to set up its plant in Odisha. Much will depend on negotiations on the regional free trade agreement, the Regional Comprehensive Economic Partnership. On the strategic front, India has asserted its place as a "stakeholder" in the Korean peace process, while South Korea has for the first time shown an interest in talking about an Indo-Pacific policy. In the short term, a symbolic token towards shared interests will be seen in a joint "capacity-building" programme in Afghanistan. At a time when U.S. foreign policy is capricious and unpredictable, and China's is making purposeful moves towards global domination, it is important that the South Korea-India partnership grows and consolidates, to contribute to stability in the region.

# A list of questionable eminence

The government's myopic approach to higher education shows in its IoE list, which totally disregards social sciences



PULPAPRE BALAKRISHNAN

The government's list of 'Institutes of Eminence' (IoEs) was awaited for the simple reason that finding a place in it would help an educational institution avoid the clutches of a dreaded regulator. Regulators are meant to ensure that we have a socially desirable outcome but in the case of higher education in India, the opposite seems to have happened. The University Grants Commission (UGC) has, over more than half a century, micromanaged this space, leading to a large number of publicly funded universities, producing low-level 'knowledge', which have shattered the aspirations of our youth.

Aware of the public anger at the functioning of the UGC, two governments in the past decade have tried to revamp the regulatory environment for higher education. The latest offering is in the form of a proposed Higher Education Commission of India (HECI). The intention is to leave the HECI to focus on quality while leaving funding of public institutions to the Ministry of Human Resource Development (MHRD).

### Engagement with ideas

This arrangement has raised the issue of the possibility of bias, leading to concerns that the government may use its discretion to reward institutions according to its ideological predilections. While this is an ever-present hazard in a democracy, one cannot in principle object to an institutional arrangement whereby an elected government exercises its right to allocate funds. One can only pres-



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sure it to be impartial and accountable in its actions. In higher education, one would imagine that this accountability would be manifested in enabling the pursuit of excellence.

It is not as if excellence is difficult to identify, even if it may be impossible to measure. In the world of ideas, excellence lies in the ability to participate as an equal in the global knowledge commons. The emphasis here must be on engagement; it is not necessary that institutions should produce knowledge in every field or that its members abide by every idea and protocol in the fields chosen. Whether the criterion of equal engagement is met by the majority of our universities is a moot question. This could be a high-priority issue for the proposed HECI.

However, even as we wonder if the HECI is going to be more than just old wine in a new bottle, we have an inkling of where it could go wrong. The government has chosen a total of six institutions — three public and three private —

for the IoE status. The public institutions are: the Indian Institute of Science (IISc), Bengaluru; and the Indian Institutes of Technology (IITs) at Delhi and Mumbai. The private ones are: the Birla Institute of Technology and Science (BITS), Pilani; the Jio Institute; and the Manipal Academy of Higher Education. The list suffers from a serious lack of credibility as the most obvious question that arises is: Where are the universities?

### Ignoring the universities

Universities by definition embody knowledge across a wide range of disciplines. While the early European universities started as academies of the arts, they soon had medicine and astronomy as areas that they pursued with vigour. The emphasis was on depth of knowledge across a broad horizon. Somewhere along the line, we seem to have lost this breadth and come to revel in a landscape dominated by engineering schools. These engineering schools, notably the IITs, have done us proud but cannot be equated with the great un-

iversities of the world for the simple reason that they are focussed on a narrow domain.

Also, if the idea behind preparing a list of the IoEs is giving them greater autonomy and enhanced financial support, it must be acknowledged that until very recently, the IITs were not meddled with; neither were they starved of resources. The IISc's scope is of course broader than that of the IITs but it does not embrace the social sciences and the humanities, the presence of which would be considered necessary for an institution to be considered a university.

Assuming that an IoE list is needed, the absence of Jawaharlal Nehru University (JNU) from the present list striking. If, as I mentioned earlier, the possibility of offered by a university for engagement with global ideas is accepted as a criterion, the JNU would count as among India's eminent educational institutions. One need not agree with any of the political ideas emanating from the university to recognise that if there is one Indian institution that engages a student as an equal in the global commons, it is the JNU. Its research work in various disciplines, ranging from history to economics, is top-quality. Its faculty have brought many of the world's leading ideas to Indian students and also come close to building a new school of thought. It is not as if similar efforts have not occurred elsewhere in India but JNU has perhaps sustained its reputation as a university for longer.

It would require a scientist assess the contribution made by the JNU to the sciences but it may be noted that it has had schools of Computer Science and the Life Sciences for many decades, right from the time when they were just nascent disciplines in the country. The choice of the three private

institutions that made the cut is as surprising as the exclusion of JNU. While BITS Pilani made significant contribution to the country at a time when it desperately needed engineers, it still doesn't have the breadth of disciplines to be considered a university.

### Dubious premise

However, the presence of the two other institutions on the list leaves one nonplussed. One of them, we are told, has been conferred the status solely on grounds of its promise, a dubious position to take as it has little to show but for the financial heft that will surely undergird it. The other is known largely for its practice of charging capitation fees. Eminence is not usually understood in terms of money.

So where does this leave us? Even before the HECI is a reality, we can get an overview of what to expect when such a limited approach to education guides the hand of the state. While there may be no political partisanship involved in the matter of finding eminence only in engineering schools, the choices do reflect short-sightedness when the social sciences and the humanities are completely ignored.

It is indeed conceivable that the politicians who govern us have little time to bother with the constitution of committees. But then, we do maintain a machinery of government, at considerable expense, to advise the Cabinet. In this episode of drawing up a list of IoEs, we are able to see what will determine whether the HECI can make a difference. Its membership will matter more than the institutional architecture governing higher education in India.

Pulpapre Balakrishnan is Professor of Ashoka University and Senior Fellow of IIM, Kozhikode. Views expressed are personal.

# Towards a culture of moral responsibility

Mob action is the most violent expression of fears about the safety of our children; it shows a lack of trust in the state



KAILASH SATYARTH

Twenty people have been killed by raging mobs, on the suspicion of being child-lifters, across the country in the last few weeks. The trigger for the fears in these violent incidents was undoubtedly WhatsApp rumours that were unfounded. I am appalled by these brutal killings.

The violence apart, there are also many people who suspect that their children could be abducted for prostitution, organ trade, forced beggary or any other form of slavery.

Eight children go missing every hour in India to remain untraced and four are sexually abused. Aren't these figures enough to cause fear among the masses?

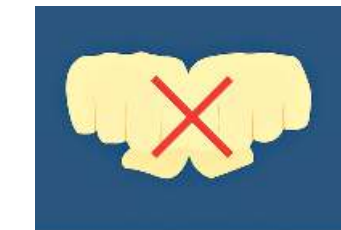
Can we say with confidence that our children are safe in homes, schools, neighbourhoods, workplaces, shelter homes, or even in-

side the places of worship and faith institutions? Can we guarantee that our children will not be abused by a family member or friend? Can we totally trust our state institutions to bring the perpetrators to justice? Fears triggered by such insecurities quickly take the form of collective frustration. Mob action, condemnable no doubt, is the most violent expression of such frustration.

### Rising anger

Last year, I led an 11,000-km Bharat Yatra to take the message of 'safe childhood' across the country. A total of 12 lakh people, including child victims of rape, their parents, survivors of child trafficking and prostitution, former child labourers, and young people, marched with me to demand their right to childhood. Though their rising anger was discernible, I repeatedly appealed to them not to take the law into their hands and to follow the legal, judicial system for justice. But it is necessary to point to the apathy among our institutions toward child safety.

Reports on incidents like the



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sale of a baby by the Missionaries of Charity home; the rape of minor girls by a self-styled godman in Delhi; and the rape of a nine-year-old girl by a Maulana in a madrasa raise a basic question: Why are many of these residential religious institutions allowed to run without stringent regulations and checks?

The government has information on 1.4 lakh missing children on one hand and on the other, has a database of three lakh children

staying in state and NGO-run children's homes. Why can't it effectively use simple technological solutions like facial recognition software and try to reunite missing children with their families? Further, what stops the largest democracy in the world from passing more stringent laws against child trafficking and child pornography?

Normally, public outrage in the case of many unfortunate incidents like those in Kathua, Unnao and Mandsaur has been selective and convenient. Nobody has questioned why an eight-year-old was grazing horses and not attending school as per constitutional right to education. Or how a school in Mandsaur could have been so unsafe for a little girl. Or why a political party not just tolerates but protects alleged rapists for so long.

Demanding capital punishment for the perpetrators of child rape is the easiest way to show social media heroism. The government's response, which includes setting up an enquiry or bringing an ordinance, is equally convenient. However, I have never come across

an incident where an individual or institution ever took moral responsibility for such a pathetic situation on child safety. Therefore, I argue for a culture of moral responsibility and accountability among our institutions, as opposed to the prevalent culture of superficial, convenient responses.

Moral responsibility is an individual decision and moral accountability is a culture. Mahatma Gandhi called off the Non-Cooperation Movement against the British because some of his supporters turned violent in Chauri Chaura. Martin Luther King Jr. repeatedly called for compassion and hope despite facing vicious racist insults. More recently, Nelson Mandela adopted the approach of reconciliation to bring about justice, despite being a brutalised victim of apartheid. A culture of accountability can be created if the society and the state are guided by a moral compass.

Nobel Peace Laureate Kailash Satyarthi is the founder of Global March against Child Labour and Kailash Satyarthi Children's Foundation

## 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.

### A rethink on 377

The central government has been unable to take a bold stance on the issue of decriminalising gay sex ("Govt. leaves decision on Section 377 to the court," July 12). With the Attorney General K.K. Venugopal recusing himself from appearing in the case, the government found itself on a weak wicket and decided to leave the decision entirely to the wisdom of the court. From the statements made by the honourable judges, it is clear that the court considers that consensual sex between same-sex adults cannot be deemed a criminal act. After its earlier judgment overturning a High Court decision that decriminalised gay sex, there seems to be a clear rethink on the part of the apex court.

C.V. ARAVIND,  
Chennai

■ The Supreme Court's observations come as a ray of

hope and relief for the oppressed LGBTQ community in our country. People from this group have undergone suffering in multiple forms through sexual abuse, social ostracism and denial of justice. How can they even think about love or relationship when their very existence is considered criminal? They should get the same privilege as other individuals. Decriminalising homosexuality would be a significant step towards delegitimising an archaic idea that refuses to treat all citizens as equal.

PRINCE KRISHNAN,  
Kollam

### Nitish's predicament

Bihar Chief Minister Nitish Kumar's image as a person of impeccable honesty got eroded, first because he aligned with a corrupt Rashtriya Janata Dal (RJD) and then because he realigned himself with the right-wing Bharatiya Janata Party (BJP). It will now be

difficult for him to fight elections on the platform of ethics and morality ("Caught in a cleft stick," July 12). With RJD chief Lalu Prasad Yadav taking a backseat due to imprisonment and handing over the reins to his son Tejashwi Yadav, the image of the RJD as a corrupt party may undergo a change. Besides, its victory in the recent byelections points to the fact that corruption no longer remains an issue. The BJP is unlikely to yield much in terms of seat-sharing to Mr. Kumar's Janata Dal (United) in the forthcoming general elections. Now trapped in an unenviable situation, Mr. Kumar faces political wilderness unless he chooses to play a subservient role to the BJP.

V. SUBRAMANIAN,  
Chennai

### War on drugs

Captain Amarinder Singh, the Punjab Chief Minister, deserves appreciation for taking serious steps to bring his State out of the drug

menace ("High on rhetoric," July 12). His mission must be two-pronged. First, he should be able to both persuade people in his State to give up on drugs and severely punish those who fail to abide by the drug-prevention laws. Second, he should eliminate the supply chain of narcotic drugs linked to the neighbouring countries, particularly those in the Golden Crescent (Iran, Afghanistan, Pakistan). Punjab has brought immense pride to the country on the agricultural front. It needs to now take steps to remove the blot of drugs from its fabric.

NAGARAJAMANI M.V.,  
Hyderabad

### A day of upsets

Croatia, undaunted despite conceding an early first-half goal, played spirited football to battle its way through to book a place in the FIFA World Cup final in its fifth appearance. The Juventus striker Mario Mandžukić's brilliant finish in the dying minutes of the extra-time put

paid to the English hopes ("Mandžukić breaks English hearts, puts Croatia in final," July 12). Earlier, the Wimbledon saw another upset when Kevin Anderson played the match of his life to register a comeback victory over Roger Federer ("Anderson scripts incredible comeback to dethrone Federer," July 12). Upsets make sporting events hugely exciting. Sometimes, what causes agony as well as ecstasy in sports is that there is only one winner at the end of a game.

C.G. KURIAKOSE,  
Kothamangalam

### CORRECTIONS & CLARIFICATIONS:

>> "Rahul meets Muslim intellectuals" (July 12, 2018), erroneously said that prominent academic Zoya Hassan was present at the meeting he had with the citizens from the Muslim community. She did not attend the meeting.

>> A subheading in the report, "Porsche unveils 911 GT2 RS, sports car priced over ₹5 cr." (July 11, 2018), erroneously said that the vehicle accelerates from zero to 100 km an hour in 28 seconds. It should have been 2.8 seconds.

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