



Content management

Courts must let government work out a balanced regulatory regime for online content

The submissions in the Supreme Court on behalf of the Tamil Nadu government in support of linking social media profiles of registered users with their Aadhaar numbers are not well-founded in the law as it now stands. It is noteworthy that a Division Bench of the Madras High Court, which is hearing two writ petitions on this matter, did not see merit in the idea. The Bench had during the hearings observed that following the Supreme Court's decision in the Aadhaar case, the unique 12-digit-number can be used only for subsidies and welfare benefits; and pointed out that Section 57 of the Aadhaar Act has been struck down to the extent that it authorised body corporate and individuals to use the number to establish someone's identity. The petitioners had approached the High Court with such a prayer on the ground that many people got away with inflammatory posts on social media because of the lack of traceability. However, the Bench has since then expanded the writ petitions' scope to examine the adequacy of the legal framework on cybercrimes and the responsibilities of intermediaries who provide telecommunication and online services. The State government is battling for better assistance from intermediaries and social media companies to trace offending messages. As two other High Courts are also hearing similar matters, Facebook, WhatsApp and Twitter have sought a transfer of all these cases to the apex court so that there are no conflicting judgments.

While the Supreme Court will decide the question of transferring these cases to itself, the Madras High Court will continue its hearing. A word of caution. The Union Ministry of Electronics and Information Technology notified new draft rules for intermediaries last year and called for public comments. The proposed rules envisage new obligations for service providers. One of the changes proposed is that intermediaries should help identify originators of offensive content. This has created some understandable misgivings at a time when there is widespread suspicion about online surveillance. Technology companies that use end-to-end encryption have pleaded inability to open a back door for identifying originators. The issue concerns the global policy of these companies as well as the wider public interest of millions of registered users. After the *K.S. Puttaswamy* decision (2017) in the 'privacy' case, any state intervention in the regulation of online content has to pass the test of proportionality laid down by the court. It will be desirable if courts do not impart needless urgency to the process of introducing a balanced regulatory regime to curb content that promotes undesirable activities such as child pornography, sectarian conflict and mob violence, without affecting individual privacy. The balance must be right between protecting privacy and allowing the state leeway to curb crime.

Crisis in Rome

Italy's political centre is crumbling as the far-right steps into an ideological vacuum

The resignation speech of Italian Prime Minister Giuseppe Conte, with his estranged Interior Minister Matteo Salvini beside him, was an acknowledgement of all that could go wrong with an opportunistic alliance between a far-right nativist party and a professed ideology-less anti-establishment group. When the 5-Star Movement led by comedian Beppe Grillo and Mr. Salvini's League joined hands after last year's elections in which no party got majority, the plan was to keep establishment parties away and offer a populist alternative. But for Mr. Conte, the technocrat Prime Minister who is not a member of any party, governance was not easy with contradictions within the coalition often coming to the fore. While the 5-Star Movement lacked any ideological alternative to offer other than its anger towards Italy's centre-left and conservative establishment parties, Mr. Salvini pushed for his party's "Italy-first", anti-immigrant, anti-EU agenda. As Interior Minister, he banned migrant ships. He also challenged the EU fiscal orthodoxy by calling for tax cuts and spending rises, which appealed to the electorate still reeling under the effects of the debt crisis. The League party, a junior member in the coalition, came first in Italy in the election to the EU Parliament with 34% vote.

The current crisis was triggered by Mr. Salvini's decision to withdraw from the coalition. With opinion polls suggesting that the League could get up to 38% of the popular vote if polls are held soon, Mr. Salvini is on course to become Prime Minister. But may be not immediately. The 5-Star Movement has indicated that it is open for talks with the centrist Democratic Party. If they stitch up an alliance, the League will be out of power for at least three years. But the problem is that even if another coalition is formed, it would not be the answer to the country's problems. An alliance between the 5-Star Movement and the Democrats would be another odd marriage, like the populist coalition that collapsed just now. It would also allow Mr. Salvini to pursue his hard-line nationalist politics freely from the opposition, preparing himself for the next election. In fact Mr. Salvini's rise, from a regional leader in northern Italy to a popular nationalist political figure now, is also the story of Italy's political and economic crisis. When establishment parties shy away from addressing structural economic issues, the crisis opens avenues for anti-establishment forces. Italy's political centre is crumbling. The Left is weak. The 5-Star Movement doesn't have an ideological programme. Mr. Salvini, whose hard nationalist views echo the far-right politics on the ascent in Europe, seems determined to exploit the Italian crisis.

State-breaking is not nation making

In the J&K demotion, every code, principle and constitutional sanction protecting federalism has been violated



NEERA CHANDHOKE

In India most linguistic and ethnic groups aspire for a State of their own. Militants have taken up arms against the government and against other groups to achieve this particular objective. It is, therefore, astonishing that the abrogation of Article 370 guaranteed by the Constitution, and the downgrading of the State of Jammu and Kashmir (J&K), are being hailed and celebrated. It is surprising that the Telangana Government which secured its State through popular mobilisation, voted for a Bill that dismembered J&K. It is shocking that the Chief Minister of Delhi, Arvind Kejriwal, who battles for statehood, also voted in favour of the Bill, as did the regional party in Odisha, the Biju Janata Dal.

Regional parties should be wary of a Central government that tampers with their State. The Government has now the power to demote any State for whatever reason. An unfortunate precedent has been set. Every code, every principle, every constitutional sanction protecting federalism has been violated by the Central government that relentlessly implements a myopic agenda. In the process no one asks, why not Article 370 that grants regional autonomy? For regional autonomy is indispensable for India's plural and complex society.

Issue of co-existence

This lesson was hammered into political consciousness by events that followed the collapse of the Berlin Wall in 1989. Countries melted away and a number of new

States emerged out of the debris of old ones often through processes of civil war, ethnic cleansing and genocide. As the world saw a rush of State-breaking and State-making, a new lease of life was infused into dormant separatist movements. Some examples were the Nagas and the Bodos in India, the Chechens in Russia, separatist movements in Azerbaijan (Nagorno-Karabakh) and Moldova (Trans-Dniester), Baluchistan in Pakistan, West Papua in Indonesia, the Oromos and the Somalis in the Ethiopia-Somali region, the Kurds in Turkey, Sudan, the Tamils in Sri Lanka, South Ossetia and Abkhazia in Georgia, and the rise of protest politics in the Kashmir Valley. Regional elites in Canada, the United Kingdom and Europe, such as Quebec, Scotland, Catalonia, the Basque country and Corsica continue to demand independence, off and on. The spate of ethnic cleansing and genocide has prompted scholars to raise the question: how can we ensure that people who speak different languages, worship different gods, and follow different belief systems coexist in a plural society?

Kernel of identity

On balance, scholars agreed that federalism is the best answer to the question of co-existence. Federalism has since long been offered as an antidote to the centralisation of power, which results in a democratic deficit in large and multicultural societies. Decentralisation and regional autonomy ensure responsive governance, fiscal prudence and efficiency as well as popular participation. But in the 1990s, scholars realised that individuals do not only seek economic benefits. Individuals need to have an identity; they need community whether that of language, or religion, or memory, or shared traditions.



Certainly, some people identify strongly with their community, others identify weakly, and still others move on and adopt the meaning systems of another community. But most of the time, most of us, are intimately attached to the community of birth. For it is from here that we learn the first alphabet of a language that teaches us how to live with people who are like us, and people who are not like us. The alphabet of this language simply allows us to make sense of ourselves, our worlds, and of our relationships with others. If community is so crucial to the fact of being human, individuals should be assured secure access to their community.

Neither the state nor society should harm my community. By harming my community through perverse imaging and acts of violence, you harm me, you harm a citizen of India. Human beings without community are lesser human beings, homeless, wanderers searching for belonging on a road that has no signboards. That is why the loss of community breeds trauma; it leads to struggle, it can even result in civil war. Across the world we see two kinds of struggle, the struggle for material resources, and the struggle for identity. The latter has led to some of the most bitter conflicts in human history.

The one institution that threatens community is the nation

A politically inconvenient data nugget

Data on demonetisation's contribution to the deepening economic slowdown may have been suppressed



PUJA MEHRA

As a task force report that recommended a new law to replace the more than 50-year-old Income Tax Act, 1961 suppressed because it inadvertently provided factual evidence for the debilitating impact of demonetisation on the formal corporate sector?

On September 1-2, 2017, at the Rajaswa Gyan Sangam (an annual conference of senior tax administrators), Prime Minister Narendra Modi had made an observation regarding the need to redraft the Income Tax Act, 1961. The Union Finance Ministry set the ball rolling for making direct taxes (on personal and corporate incomes) simple and in consonance with India's economic needs. On November 22, 2017, it appointed a six-member 'Task Force for drafting a New Direct Tax Legislation'.

On September 26, 2018, however, an office memorandum was issued "with the approval of the Finance Minister", requesting the task force's convener "not to submit its report to the Government until and unless the Draft prepared by the Convener of the Task Force is deliberated clause by clause by all Members of the Task Force and has agreement of all Members or at least majority of Members".

The convener, an Indian Revenue Service officer and the former

Central Board of Direct Taxes (CBDT) Member (Legislation) Arbind Modi, who was closely involved earlier with tax reforms by the A.B. Vajpayee and Manmohan Singh governments, was to supersede on September 30, 2018. No extension was given for complying with the office memorandum.

The convener, nevertheless, submitted "four volumes in sealed cover of the report and draft legislation" to the Finance Minister and the Finance Secretary on September 28, 2018 "for continuity" and "record purposes".

In November 2018, the Finance Ministry appointed Akhilesh Ranjan, the new Member (Legislation), CBDT, to succeed Mr. Modi as the task force convener. Mr. Ranjan submitted his report to the Finance Minister on August 19, 2019.

Demonetisation's blow

Drawing insights from the tax department's database of annual tax returns filed by corporate firms and individuals, Mr. Arbind Modi's report had proposed two alternative approaches along with draft legislations corresponding to each of the models for a new direct taxes law.

The chapter on reform proposals for corporate taxes has a table (page 109, Volume I) that makes for a significant piece of evidence for how demonetisation may have affected companies. The table shows aggregates of investments corporate firms disclosed in their annual tax return filings.

The aggregate of investments disclosed in the assessment year 2017-18, or financial year 2016-17,



the demonetisation year, plummeted to ₹4,25,051 crore – or a drop of nearly 60% from the previous year.

In the seven financial years, from 2010-11 to 2016-17, the aggregates of investments disclosed were ₹11,72,550 crore, ₹9,25,010 crore, ₹10,22,376 crore, ₹11,03,969 crore, ₹9,98,056 crore, ₹10,33,847 crore and ₹4,25,051 crore. The near collapse becomes apparent when the aggregates are seen as a percentage of GDP. The investments by corporate firms that filed annual returns in each of the years from 2010-11 to 2016-17 as a percentage of GDP were 15%, 10.5%, 10.2%, 9.8%, 9%, 7.5% and 2.7%.

The aggregate figures are actuals (therefore nominals) sourced from companies' statutory disclosures, and not the estimates or findings of some survey. This in fact makes the data undeniable evidence of demonetisation's contribution to the deepening economic slowdown that has become a headache for the Modi government early in its second tenure.

The report throws up a few more worrying trends. For example, on page 115, Volume I, the report notes: "About 50 percent of the companies registered with the Registrar of Companies filed their

income tax returns for the financial year 2016-17 (assessment year 2017-18)"

"The share of loss-making companies has increased from 42 percent in AY 2013-14 to 45 percent in AY 2017-18"

"There has been a decline in the number of corporate filers from the manufacturing sector over the period AY 2013-14 to AY 2017-18"

"The return on equity declined from 16.4 percent in AY 2013-14 to 15.5 percent in AY 2015-16 and thereafter has reversed the trend and increased to 16.5 percent in AY 2017-18"

"The efficiency (productivity) of the corporate tax, which shows the policy choices regarding tax concessions and the overall levels of non-compliance, is extremely low at 7.5 percent over the period AY 2013-14 to 2017-18. Compared to other select economies, India's productivity of corporate income tax is the lowest".

"Given the limited fiscal space available to the Government, economic growth would necessarily have to be driven by private investment.... [but] corporate investments have remained virtually stagnant despite the availability of sufficient retained earnings".

state. This is considered one of the major mistakes of history. Nations do not emerge as fully-fashioned entities; they are created by states through flattening out of diverse languages, religions, cultures, through conscription, through education, and through coercion. Attempts by States in the post-colonial world to forge nations out of diverse populations have resulted in tremendous harm. In Sri Lanka, the official estimate was that under 7,000 people were killed, and 72,000 civilians were displaced from their homes by the Sri Lankan Army, as well as by the secessionist group, the Liberation Tigers of Tamil Eelam, in the last phase of the civil war, between January 2009 and May 2009 alone. But this ran counter to data by experts at the United Nations which estimated that as many as 40,000 civilians, if not more, lost their lives.

Thousands of innocent people died as a result of suicide bombings, grenade explosions, attacks on government buildings and installations, indiscriminate murders, assassinations, arson and crossfire. In 1971, when East Pakistan declared itself independent of Pakistan, an estimated 3 million people died in the war between the new state of Bangladesh and the parent country. About 8 to 10 million were rendered homeless. In another historical context, A.E. Housman had written: "They say my verse is sad: no wonder, its narrow measure spans, Tears of eternity and sorrow, Not mine, but man's." These lines may well provide the epigraph of the nation state.

Regional autonomy

The homogenising impulse of the nation state generates resistance. These are political wars; they cannot be resolved by military means. The only way to stem, to ward off

disorder and the innumerable tragedies mayhem spawns is to strengthen federalism. A decentralised political system enables participation. It also protects minority identities. This was the precise logic that governed the linguistic reorganisation of States in India in the 1950s. This was the precise logic that gave to J&K, along with other constituent States of the Indian federal system, regional autonomy.

Mature democracies do not steamroller diversity or oppress minorities. They understand that diverse cultures expand and enrich our grasp of the complexities, and the dilemmas of the human condition. A monochromatic society is, by definition, soulless and bare. Stripped of the excitement of learning new languages, acquaintance with new values, familiarity with new cuisines, literature, music, art, sculpture, and ways of conceiving the world, life becomes dull. Life in a plural society promises adventure.

The best way to protect diversity is through the grant of regional autonomy. If we abolish diversity we land up with a sense of longing, loss, and ultimately resentment. Kashmir's greatest contemporary poet, Agha Shahid Ali, who died at 52, powerfully captures this sense of loss and longing in his poem, 'A Wrong Turn': "In my dream I am always in a massacred town, its name/erased from maps/no road signs to it/Only a wrong turn brings me here..." Imagine what happens to a people when they lose Statehood. They become refugees in their own land, the land of their ancestors, the land of their memories, the land of their traditions. We have rootless individuals on our hands. They can go in any direction.

Neera Chandhoke is a former Professor of Political Science at Delhi University

LETTERS TO THE EDITOR

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Kashmir special status

The continued lamenting on the abrogation of Article 370 and the division of Jammu and Kashmir as well as fear of a possible conflagration expressed by some political leaders and opinion writers is bewildering. Have they forgotten that it is the fruitless dialogue with a belligerent neighbour for decades, sporadic violence instigated by separatists and the helplessness of successive governments in ensuring lasting peace that has forced the Central government to resort to the inevitable? The Prime Minister has made an

assurance of early restoration of original status as well as holding elections to usher in growth. Other nations too have recognised the issue as India's "internal matter".

B. GURUMURTHY,
Madurai

Aadhaar linkage

The petition pending in the Madras High Court pertaining to linking social media accounts to Aadhaar poses a dangerous threat to their privacy. With no data protection law in place, this will leave the online users vulnerable (Page 1, "Aadhaar-social media link: SC concerned over misuse

of web", August 21). When the right to privacy has been upheld as a fundamental right, the government machinery should come up with innovative solutions that do compromise privacy while checking fake news, defamatory and explicit content. Aadhaar-linkage is the easy and lazy way out.

BALAJI AKIRI,
Hyderabad

Journal editorial

It may be the editorial policy of the medical journal, *The Lancet*, to comment on policy that harms people's health (OpEd page, "Recognising

fair criticism", August 21). But the hope is that it should be consistent and fair. In this connection, one would like to know whether the journal made similar observations on the plight of Kashmiri Pandits who were evicted forcibly from Kashmir. Was their plight any less? They too must have been under severe stress.

JAYATHEERTHA S.A.,
Hyderabad

■ The reach of high impact journals such as *The Lancet* cannot be disputed. It is puzzling how the medical fraternity in India completely missed the fact about the

journal's policy. The virus of intolerance is spreading in India. Unfortunately, medical practitioners have fallen victim this time.

A. VENKATASUBRAMANIAN,
Tiruchi

Growing up years

When my father accompanied me on a medical appointment for a complaint of high BP, the doctor advised me to take up swimming if a daily walk was not possible because of work pressure and the long commute from home to work and back. He said it was one of the best forms of exercise. When I joined a swimming course on the first day, my

father dived into the swimming pool which took me by surprise. He was fit as a fiddle even in his late sixties. He told me that he had learnt swimming with other children in his hometown where there were lakes and canals. Parents must pay heed to physical activities for their children. Now learning to swim comes with a cost. Parents must ensure that their children have a balanced life in this age of social media (Open Page, "Of wonder-filled childhood", August 18).

S. ARJUN PRASANNA,
Bengaluru

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