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## Tricky call ahead

The RBI faces a tough call on setting policy rates given the inflation and liquidity concerns

The Reserve Bank of India's Monetary Policy Committee (MPC) is set to meet for three days, October 3-5, to decide its policy stance. With the U.S. Federal Reserve now firmly set on its policy normalisation path and having, just last week, raised interest rates by 25 basis points, the RBI would normally be expected to increase benchmark borrowing costs in India in a bid to prevent heightened outflows of rate arbitrage seeking portfolio capital. Additionally, the rupee's depreciation of more than 12% against the dollar in 2018, combined with crude oil's continuing upward march – Brent futures closed at $82.73 a barrel on Friday – raise the risk of India importing inflation from the higher price for its overseas energy purchases, making the argument for a rate hike even more compelling. After all, given its unequivocal inflation-targeting mandate, the MPC would be well justified in keeping its sights firmly trained on the retail inflation trend and household expectations for future price gains. Also, while headline CPI inflation eased appreciably in August to 3.69%, core retail price gains, which exclude the food and fuel and light groups, was still running 190 basis points higher at 5.59%. It was precisely this core element that Deputy Governor Viral Acharya cited in his statement at the MPC's August meeting when he said: "Underlying inflation as reflected in 'ex food fuel' segment, especially in petrol and diesel, transportation (including fares), education fees, health services and clothing persists, and does not augur well for headline inflation going forward." Food prices that, surprisingly, have remained benign, helping slow overall CPI inflation, could also start hardening once the impact of the higher payout on the minimum support price for kharif crops kicks in.

However, recent developments in the domestic financial system that have triggered concerns about the health of the credit market are likely to roil the MPC's rate-setting calculus. First, on September 23, the RBI issued a one-sentence press release that along with the capital markets regulator it was "closely monitoring" developments in the financial markets and they were ready to take "appropriate action". Four days later, on September 27, it announced a relaxation in the Liquidity Coverage Ratio for banks in a move to soothe concerns about adequacy of liquidity. Read together, the message from the banking regulator appears to be that it is keen to ward off any risks to the availability and cost of short-term credit from any unforeseen financial market volatility. The tweak to the LCR norms is expected to free up close to ₹2.5 lakh crore in additional liquidity, with half of it, or ₹1.25 lakh crore, becoming available to the banking system at the more affordable repo rate of 6.5%. It is this concern about the financial markets that will make the MPC's task just a little trickier.

## Cup of surprises

India won the Asia Cup as expected — but it was Afghanistan that won hearts

The victory was no surprise but it took a nerve-racking final against Bangladesh in Dubai for Rohit Sharma's men to win the Asia Cup and and fulfil their pre-tournament billing. Yet, as the final revealed in the form of a weaker team that punched well above its weight, or in the glorious run that Afghanistan had, this continental edition was more about the underdog altering scripts and surprising more fancied rivals. Asian powerhouses Sri Lanka and Pakistan tumbled out while Afghanistan held India to a tie. The medley of surprise results proved that cricket will continue to evolve and challenge its own hierarchies, especially in abridged versions such as One-Day Internationals and Twenty20s. It is a trend that will keep established teams on notice as matches in the coming months are a prelude to the 2019 World Cup starting in England and Wales on May 30. This state of performance flux was also reflected within the Indian outfit, which missed an injured Virat Kohli and is still searching for consistent batsmen in the middle-order just below the regular skipper. M.S. Dhoni, the finisher, is seemingly on the wane but his lightning reflexes behind the stumps remain intact and clearly he can still shepherd the chase and groom others to play like winners, a role akin to Rahul Dravid's more than a decade ago.

India won its seventh Asia Cup but the honours for winning hearts firmly belonged to Afghanistan. A decade ago, Afghanistan was playing in Division Five of the ICC World Cricket League, competing against the likes of Norway, Vanuatu and Japan. The cricketing baby-steps first practised in the refugee camps near Peshawar in Pakistan were seen both as a distraction from the strife back home, and equally as a shot at forging a new life. Just this May, eight people were killed in a bomb explosion at a stadium at Jalalabad. Seen in that context, cricket has been a soothing balm, and the team led by Asghar Afghan dished out a rousing show with easy victories over Bangladesh and Sri Lanka in the group games and then suffered tense, last-over losses to Bangladesh and Pakistan in the Super Four. In the dramatic tie against India, opener Mohammad Shahzad batted with aplomb and the spinners played a key role in restricting India. Afghanistan's cricketers can no longer be treated as mere journeymen or plucky amateurs who ride on luck. Leg-spinner Rashid Khan is the world's top-rated T20I bowler and second on the ICC's rankings for ODIs. Teenage off-break bowler Mujeeb Ur Rahman has been impressive, with other promising spinners waiting to break through. Emerging cricketing nations can draw inspiration from Afghanistan; its momentum must be nurtured by adequate support from powerful cricket boards. India has already provided a training base in Noida; others should follow suit.

# An ongoing quest for equality

The Supreme Court will soon have the opportunity to consider the differing opinions in the Sabarimala verdict

SUHRITH PARTHASARATHY

On September 28, the Supreme Court delivered a 4:1 verdict, in *Indian Young Lawyers Association v. State of Kerala*, throwing open the doors of the Sabarimala temple to women of all ages. At stake were several thorny questions. How deep must the judiciary's inquiry go in deciding whether to intervene in matters of religion? Should the court disturb ethical choices made by a community of believers? How must the integrity behind these practices be judged? Are religious exercises susceptible to conventional constitutional standards of justice and equality?

As the four opinions delivered by the court show us, these questions are open to diverse interpretations. While the majority agreed that women of all ages should be allowed to freely access the Sabarimala temple, each of the court's judgments, including Justice Indu Malhotra's dissenting opinion, speaks to a different, and constitutionally plausible, vision.

How the court chooses to take forward the ideas professed here will prove hugely telling. Will judges continue to don ecclesiastical robes in testing what manners of religious practices deserve constitutional protection? Or will the court steer itself towards a more radical, yet constitutionally consistent, path, by predicating its analysis on equal concern, by breaking, as Justice D.Y. Chandrachud wrote in his concurring opinion, the "shackles of social hierarchies"?

### The scope of Article 26

The respondents in *Indian Young Lawyers Association*, including a clutch of intervenors, justified the ban on entry of women chiefly at two levels. First, the temple, they argued, enjoyed denominational status under Article 26 of the Constitution, which allowed it to determine for itself the manner in which it managed its religious affairs. Second, prohibiting women of menstruating age from entering Sabarimala, they contended, is supported by the temple's long-honoured custom: since Lord Ayyappan is a "Naishtika Brahmachari", allowing women aged between 10 and 50 years to enter the temple, it was claimed, would affect the deity's "celibacy". What's more, this custom, the Travancore Devaswom Board, which administers the temple, further asserted, was supported by Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965, which states, "Women who are not by custom and usage allowed to enter a place of public worship shall not be entitled to enter or offer worship in any place of public worship."

The first of these arguments was rejected outright by the court's majority. Chief Justice of India (CJI) Dipak Misra, in his opinion written for himself and Justice A.M. Khanwilkar, found no doctrinal or factual support for the temple's claim for denominational status. Justices R.F. Nariman and Chandrachud concurred. The devotees of the Sabarimala temple, they found, were in no way distinct from the larger community of Hindu believers. Consequently, the court also repudiated the validity of Rule 3(b), which, it said, was, at its core, discriminatory towards women.

Justice Malhotra dissented. Since no person actually offended by the rule had approached the court, the public interest petitions, she ruled, were not maintainable. Her concerns are undeniably valid and must animate future cases. Here, however, given that the challenges to the practice had been entertained as far back

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as in 2006, and given that specific questions of far-reaching importance were posed to the Constitution Bench by reference, the majority quite correctly chose to deliver a verdict on merits. In any event, Justice Malhotra also ruled that the Sabarimala temple constitutes a separate religious denomination, and, therefore, the temple's administrators were at liberty to make customary exceptions in matters of religious practice. This freedom, in her opinion, extended power to the temple to proscribe women from entering its precincts.

### Essential practices doctrine

Yet, much as the differing views between the majority and the dissenting opinions on the maintainability of the petitions and the denominational status of the temple are stark, the real nub of the controversy is elsewhere. It lies in Justice Malhotra's withering and principled critique of the essential practices doctrine, through which the court has virtually assumed theological prerogative.

Ordinarily, in determining whether a purportedly religious command is constitutionally protected, the courts have sought to test whether such a belief is essential to that religion. Here, for instance, CJI Misra found that the practice of excluding women aged between 10 and 50 years from the Sabarimala temple is dispensable, in that the "nature" of the Hindu religion would not be "fundamentally altered" by allowing women to enter the temple. Although an examination of this kind is strongly backed by precedent, Justice Malhotra was especially critical of the approach. In her belief, the power of judicial review ought not to accord to courts the authority to judge the rationality of a matter of faith. "The issue of what constitutes an essential religious practice," she wrote, "is for the religious community to decide."

In this, the value in her opinion can scarcely be doubted. After all, the essential practices doctrine has allowed the Supreme Court to arrogate to itself the powers of a religious pontiff. But, equally, as Justice Malhotra notes, there may well be practices that are so pernicious and oppressive which might well demand the court's interference. These, in her words, would include a "social evil, like Sati". Ultimately, therefore, the dissenting opinion begs a question. It leaves us wondering how far the right to freedom of religion can really extend. And to what extent a group's collective liberty can trump an individual's equal right to freedom of religion. Would, for example, denial to women of the right to serve as priests, or to be ordained as bishops, be considered oppressive?

Here, Justice Chandrachud's judgment offers an appealing way forward. The assumption by the court of a religious mantle, he admitted, has led to a muddling in the court's jurisprudence, and, as a result, significant constitutional concerns have been skirted. What needs answering, in his belief, is whether the Constitution "ascribes to religion and to religious denominations the authority to enforce practices which exclude a group of citizens". The court, therefore, he has suggested, must look beyond the essential practices doctrine and examine claims by applying a principle of "anti-exclusion". Or, in other words, "where a religious practice causes the exclusion of individuals in a manner which impairs their dignity or hampers their access to basic goods, the freedom of religion must give way to the over-arching values of a liberal Constitution."

### A way forward

Ultimately, therefore, for Justice Chandrachud, the Constitution must be seen as a document that seeks to bring about a transformed society. When a religious practice goes so far as to deny women equal status in society, when notions of purity and pollution are employed to perpetuate discrimination, the Constitution ought to mandate a shattering of the conventional divides between the private and the public.

The real test, in Justice Chandrachud's opinion, is to assess whether an exclusion founded on religious belief, essential or otherwise, encroaches on a person's basic right to dignity. Or in other words, discrimination couched as plurality cannot be allowed to undermine the Constitution's basic "quest for equality".

The Supreme Court will soon have the opportunity to consider, once again, the differing visions offered in *Indian Young Lawyers Association*. For instance, when it hears arguments on the correctness of its 1962 judgment striking down the Bombay Prevention of Excommunication Act of 1949, which recognised the Dai-al-Mutlaq's powers to excommunicate persons from membership of the Dawoodi Bohra community, the court might well want to refer the case to a bench of seven judges or more and re-examine altogether the continuing validity of the essential practices doctrine. When it does so, it might also want to heed Justice Chandrachud's words that "the Constitution exists not only to disenable entrenched structures of discrimination and prejudice, but to empower those who traditionally have been deprived of an equal citizenship."

*Suhrith Parthasarathy is an advocate practising at the Madras High Court*

# In Parliament's court

It is time for legislation to thoroughly clean up electoral politics

SANJAY KUMAR & AMRIT PRAKASH PANDEY

While the issue of candidates facing criminal charges getting elected to Parliament and State legislative Assemblies is often raised, initiatives to minimise the problem, if not eliminate it completely, have been rather slow. One had hoped that the judiciary would show the way forward with regard to preventing such candidates from contesting elections, but in a recent judgment, the Supreme Court has left it to Parliament to legislate on the subject.

The expectation was not unreasonable, as some important changes in the electoral laws – making it mandatory for candidates to submit an affidavit with full disclosure of criminal cases, if any, and details of their asset and income – were made mandatory by the judiciary. The most recent change, i.e. providing an option to voters to exercise None of the Above (NOTA) in case they do not want to vote for any of the candidate contesting an election, was also introduced by the judiciary in 2003 on the basis of the PIL filed by People's Union for Civil Liberties.

The court mentioned that it was not within its powers to disqualify politicians facing criminal cases from contesting election, but recommended that Parliament enact a strong law. However, the court made it mandatory for political parties and candidates themselves to make public disclosure through print and electronic media.

But there is serious doubt whether this judgment would in any way help in making our politics cleaner than before. The chances of Parliament acting fast on this issue are dim. The reasons are simple and obvious. No political party is free of this problem. The use of muscle power along with money power is a weapon used by all political parties to maximise electoral gains. In such a scenario, any move to ban candidates with a criminal record from contesting elections would mean political parties inflicting self-harm.

REUTERS

### What data show

Data from the Association for Democratic Reforms (ADR) indicate that 179 out of the 543 elected Members of Parliament in the present Lok Sabha have some kind of criminal case pending against them. While it is true that some of these may be of a frivolous nature, it is also true that many of these cases concern allegations of their involvement in serious crimes. In the case of over 100 MPs, the cases were of a very serious nature such as crimes against women and kidnapping. There seems to be very little improvement in this regard in the last five years. In the previous Lok Sabha (2009), 163 had criminal cases pending against them, many of which were of a serious nature. The profile of members of the Upper House is no better; of 228 members of the Rajya Sabha for whom data could be analysed, 20 have cases of serious crimes pending against them.

While political parties raise concern about candidates with a tainted background contesting elections and getting elected, none of them come forward to set an example for others when it is time to act. Among the Bharatiya Janata Party's MPs (Lok Sabha and Rajya Sabha), 107 (32%) have criminal cases pending against them. Of them, 64 (19%) have cases of serious crimes pending against them. The Congress is only a shade better than the BJP; 15 MPs (15%) have criminal cases pending against them, of whom eight (8%) have cases of serious criminal offences pending against them. There is hardly any difference between the national and regional parties in this regard. In the Shiv Sena, 18 MPs (86%) have criminal cases pending against them, of whom 10 (48%) are alleged to be involved in serious criminal cases. Of all MPs, six each of the National-ist Congress Party (55%) and the Rashtriya Janata Dal (67%) have serious criminal cases pending against them. Going by the ADR's estimates, there are more than 1,500 MPs and MLAs in Parliament and State Assemblies with criminal cases pending against them.

The issue is far more important and serious than the attention being paid to it by the policy makers. While the Election Commission has limited powers to legislate on such laws, it is only Parliament which can legislate to bring about the desired change. Public opinion too is not firm on this. For example, a survey conducted by the Centre for the Study of Developing Societies, found that opinion was divided when people were asked whether they would be willing to vote for a honest candidate who may not get their work done, or a tainted candidate who could get their work done.

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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.

### Sabarimala verdict

The Supreme Court's verdict in the Sabarimala case is welcome. Now the challenge and task before the Kerala government lies in dealing with the logistics of managing an even larger crowd of pilgrims. Perhaps the temple should be kept open all through the year. Thought has to be given to transportation facilities, sanitation, food and drinking water. Proper arrangements have also to be put in place to ensure foolproof safety and security of women.

BALACHANDRAN NAIR,
Konni, Kerala,

■ The verdict is a reminder of how valued cultural and religious symbols and institutions can have their narrative changed with just the stroke of the judiciary's pen. I recall my father's preparations for his pilgrimage to the temple when he was about 20 (he would have been 103 had he been alive). He went through the extreme rigours of staying away from his home, taking shelter in a shrine nearby, cooking his own meal using raw rice, and subsisting on just one meal a day for 41 days before starting out. This was just to avoid contact with women, who included his mother, grandmother and other senior female members, who in turn felt respected by such action rather than insulted as one would today assume. Of course such rigour is no longer observed. But such practices and memories are what make the Sabarimala experience unique. Things will no longer be the same again.

S. JAGATHSIMHAN NAIR,
Thiruvanathapuram

■ The lone dissenting judge, Justice Indu Malhotra, has rightly said that the court cannot impose its morality or rationality with respect to the form of worship of a deity. Ancient traditions and practices differ from temple to temple in this vast land of unity amidst diversity. Stream-rolling of diverse traditions and cultures is something courts would do well to avoid.

KANGAYAM R. NARASIMHAN,
Chennai

■ I wonder whether judicial thought went into the far-reaching implications of the verdict. It is fine to be talking about equality when it comes to worship, but the Sabarimala temple has its own set of unique issues. It is essentially a temple that shares valuable space with one of India's premier biosphere reserves. With the number of pilgrims expected to increase manifold now, and safe and secure facilities having to be created for women pilgrims, it stands to reason that this would mean carving out more land from the adjacent and shrinking Periyar tiger reserve, which is already facing numerous pressures and unaddressed environmental concerns. No heed has been paid to detailed reports of the impact of plastic waste on wildlife and the release of untreated human waste in the forest areas and surrounding water bodies, especially during the pilgrimage season. Given this unique problem, the top court should have taken its time before pronouncing its verdict. The ecosystem around Sabarimala should not be given short shrift.

KAVERI MEDAPPA,
Bengaluru

### Ugly truth

It is most shocking that four years after Swachh Bharat, there are still sections of society which can get their next meal only if engaged in manual scavenging (Page 1, 'Sunday Special' –"Four years after Swachh: cleaning excreta for roti", September 30). It is clear that data on rural areas being open defecation free appear to be bogus and need to be revisited as one is sure to find many more Santa Devis across India. How many more dark, dehumanising days are there to be in their lives? The judiciary needs to act firmly.

J.P. REDDY,
Nalgonda, Telangana

### Industry and unrest

Ever since the advent and introduction of neoliberal policies in industry, terms such as contractual employment, casual labour, employment on daily wages and outsourcing have come to stay and torment the workforce. The workforce also suffers if there is an issue of improving productivity and cost reduction. In the name of "ease of doing business" and "attracting investment", labour laws have been diluted, obviously in favour of the employer. The labour unrest in Manesar not so long ago is a grim reminder of the unfavourable climate that prevails for a work force already carved out as contractual, daily wage and permanent employees, with varied salaries to often carry out the same work. Trade unions will have to launch a sustained battle against the might of the corporate world in order to address genuine/basic problems of a distressed workforce (Tamil Nadu, "Labour pains", September 30).

G.B. SIVANANDAM,
Coimbatore

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**CORRECTIONS & CLARIFICATIONS:** The opening sentence of the Sunday magazine lead article "From Manipur to Madras" (Sept. 30, 2018) erroneously portrays a sunset into the Bay of Bengal. It should be recast to read: "As the evening sun begins *its descent*, Subash and ... sit on the promenade of Chennai's Elliot's Beach, whiling away what remains of a muggy day."

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, Kasturi 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