A welcome retreat

The Centre wisely withdraws the FRDI Bill; but the issues it sought to address remain

In just under 12 months since its introduction in Parliament, the Centre has quietly withdrawn the Financial Resolution and Deposit Insurance Bill, 2017. The decision to seek the Lok Sabha's approval to withdraw the legislation this week is a clear acknowledgement by the government that it had underestimated the extent and intensity of public opposition to the proposed law. One provision in the Bill had, in particular, generated the greatest debate and attracted the fiercest criticism and ultimately proved to be its very undoing: the "bail-in" clause. That banks, by the very nature of their business, are essentially dependent on the funds lent to them by depositors to serve as the pool of lendable resources from which they provide credit to borrowers is well known and requires no elaboration. So when a depositor apprehends that her hard-earned savings placed in a bank may be at risk from a law that forces her to partake in the pain of financial losses in case her bank is forced into resolution on account of distress, she will naturally fear such a legislation. The government did make strenuous efforts to reassure the public, explaining the rationale for the Bill as well as the built-in "safeguards" relating to the bail-in provision. However, its exertions made little headway. Union Minister Piyush Goyal finally informed the joint parliamentary committee that was reviewing the Bill that a "resolution of these issues would require a comprehensive examination and reconsideration", and that therefore the government deemed it "appropriate" that the Bill be withdrawn.

However, the need for a specialised dispensation to cope with large financial corporations on the verge of going bust cannot be overstated, especially given the contagion risk that a bank failure can pose to overall financial stability. The withdrawal of the FRDI Bill should therefore be used as an opportunity by policymakers to reappraise the existing framework for resolving bankruptcy scenarios among financial entities. While such a review ought to include an evaluation of the progress made by the Insolvency and Bankruptcy Code in addressing the crucial issue of debt resolution in the banking sector, it must also look at ways to strengthen the Deposit Insurance and Credit Guarantee Corporation. Set up in the early 1960s in the aftermath of the collapse of two banks, the DICGC, which guarantees repayment of bank deposits up to ₹1 lakh in case a bank is liquidated, has not reviewed the amount under guarantee since 1993. This anomaly must be addressed, especially at a time when several state-run public sector banks have been roiled by a series of frauds and high levels of bad loans. Any measure that helps prevent further erosion of public faith in the beleaguered banking system would undoubtedly be very welcome.

Kohli's moment

Can he build on a good start to the English summer to establish greatness in Test cricket?

The latest ICC Test rankings with Virat Kohli as the top batsman provide a curiously apt backdrop to the Indian cricket team's current tour of England. His ranking was enabled by his 200 runs, 149 in the first innings and 51 in the second, in the first Test in Birmingham which almost took India to victory, but in the event spared the tourists the embarrassment of a crushing defeat. Together, the two overlapping statistics – Kohli's success in taking command of India's batting in both innings, even if it fell short of getting the team past the English total, and his ascent up the ICC rankings – frame the juncture the India team is at. Kohli has comfortably asserted his dominance in the abbreviated formats of the game, both One-Day Internationals and Twenty20s. Yet when it came to Tests, despite his 53-plus average, there had always been a debate over the critical distance he needed to traverse from being a very good batsman to being counted among the greats of the modern era. His dismal showing during India's previous tour of England, in 2014, with just 134 runs from 10 innings, could not be ignored. Kohli is conscious of the need to prove himself in away tours. Once he had spoken of his dream to score a Test ton against Dale Steyn and company in South Africa, and went on to promptly do so in 2013. England presents an especially important challenge to him. For one, it is a personal point to prove against James Anderson, who had in 2014 dismissed Kohli on four occasions. He has clearly learnt to play Anderson, and in Birmingham, his line around the off-stump was either countered with a straight bat and soft hands or left alone.

More importantly, with England having revived the tradition of five-Test series, a victorious English summer has become a measure of a team's ability to count itself among the best. In the first Test, Kohli's innings were worthy of being preserved as textbook manuals on batting against crafty fast bowlers. Equally, his leadership qualities were revealed by his skill in shielding the tail as he piled up his 149 in the first innings. The ICC top ranking will likely remain his for some time. With 934 points, Kohli is just marginally ahead of Steve Smith (929), but the Australian is currently serving a one-year ban for ball-tampering and holds no threat; the next two potential challengers, England's Joe Root (865) and New Zealander Kane Williamson (847), hover far behind. But the remaining four Tests, including the Lord's fixture that began on Thursday, will determine the Indian skipper's capacity to seize the moment. Kohli has clearly reclaimed his mojo in England, but in a team sport, he will also have to draw out the best from his whole pack to claim greatness.

Perils of historical amnesia

Critics of Article 35A forget that it was introduced to bring J&K closer to India, not tear it further apart

SANDEEP BHARDWAJ

AFP

The irony of today's India is that while our politics is looking towards our history more often than ever before, we are also becoming comfortable with its constant manipulation. The controversial Article 35A of the Constitution, which is currently being challenged in the Supreme Court, is a case in point. Its critics have argued that the Article affords Jammu and Kashmir undue powers, particularly by preventing non-State residents to own land in the State. The media has largely gone along with this explanation, often portraying the debate as a question of "special status" of Jammu and Kashmir and the Article as some sort of unusual concession to the State. In fact, the fundamental purpose of Article 35A, when it was introduced in 1954 as part of a Presidential Order, was the exact opposite: instead of giving the state a "special status", it was designed to take autonomy away from it.

A larger package

The Article was introduced in May 1954 as part of a larger Presidential Order package, which made several additions to the Constitution (not just Article 35A). The overall gist of this Order was to give the Government of India enormously more powers over the State than it had enjoyed before. For the first time, India's fundamental rights and directive principles were applicable to Jammu and Kashmir and the State's finances were integrated with India. Importantly, the Order also extended the Indian Supreme Court's jurisdiction over certain aspects of Jammu and Kashmir.

Just as crucially, the Order had come about only after the Jammu and Kashmir government had agreed to it and passed a similar legislation in its own Constituent Assembly, making it clear that these powers were Jammu and Kashmir's to give, not India's to take. In fact, at the time of its introduction, the Order was celebrated in India as a great step towards bringing Jammu and Kashmir closer into the Union of India. Even the Hindu right-wing leaders had hailed it as a "commendable step". No eyebrows were raised over the minor issue of Article 35A, which made up a very small component of the Order.

Of course, the larger problem is that after decades of confusion and purposeful obfuscation, we tend to forget that initially Kashmir was conceived as a State with "special status". The controversial Instrument of Accession signed by Maharaja Hari Singh in 1947 which brought the State into the Union of India gave New Delhi control only over Kashmir's defence, foreign policy and communications. On all other matters, the State government retained powers. On the spectrum of autonomy, Jammu and Kashmir lay somewhere between, say, Bihar, a fully integrated State of India, and Bhutan, which enjoyed limited sovereignty under the protection of India. India's tenuous grasp over Jammu and Kashmir was further complicated by New Delhi's international commitment to hold a plebiscite in the State to decide its eventual fate.

It is because of this weak India-Kashmir constitutional link that Sheikh Abdullah became "Prime Minister" of Kashmir; the State had its own Constituent Assembly and flag; there were customs checks between India and the State; the Supreme Court did not have jurisdiction over key issues in the State; Kashmir militia was constituted as a separate force; and Srinagar tried to send its own trade commissioners to foreign countries. With the coming into effect of the Indian Constitution in January 1950, New Delhi's powers over Jammu and Kashmir were defined more clearly through a Presidential Order (a predecessor of 1954 Order). However, just in the areas of defence, foreign affairs and communications was Jammu and Kashmir put on the same footing as the rest of India. On issues of commerce, audit, judiciary, elections and finance, there were considerable modifications. India's fundamental rights and directive principles were not applicable in Jammu and Kashmir at all.

The Delhi Agreement

Only in 1952, after the international clamour for an immediate plebiscite had somewhat subsided, did Jawaharlal Nehru invite Abdullah to discuss how India and Jammu and Kashmir could be more closely integrated. The result was the 1952 Delhi Agreement which, contrary to popular belief, still fell short of the 1954 Presidential Order. For instance, the 1952 agreement did not finalise financial integration and required the fundamental rights and citizenship to be granted to the State's residents via the State Legislature.

Before the Delhi Agreement could be implemented, the situation was altered radically because of three factors. First, any plans for an immediate Plebiscite were abandoned in 1954, which strengthened New Delhi's hand. Second, in 1953, Nehru faced a nationwide campaign from the Hindu right-wing demanding greater integration of Kashmir. And finally, and perhaps most importantly, in August 1953, Abdullah was arrested and replaced by Bakshi Ghulam Mohammed, who was far more amenable to integration with India.

So, in January 1954, New Delhi negotiated a new agreement with Bakshi, which was passed by the Kashmir Constituent Assembly in February, and eventually introduced through Presidential Order in May. However, it still left the State with enormous autonomy. Foremost, all "residuary powers" rested with the State legislature. The State government could detain people who did not enjoy the right to appeal to the Supreme Court. It also retained its controversial land reforms measures and the final authority over any alteration of the State's boundaries. Among its lesser known provisions at the time was Article 35A, a holdover from the colonial era.

It took another 70 years of successive governments steadily chipping away at Jammu and Kashmir's autonomy to bring it to today, when the only meaningful "special status" that it enjoys is Article 35A. Almost all of State's other autonomous powers have been subsumed by New Delhi. Today's debate over the Article should be seen as part of this larger decades-long process of the State's integration into India, sometimes through legal means and sometimes through outright fiat.

Vestige of a broken promise

To be sure, the whole project of federal nation-building requires constant negotiation between the nation state and its components. Arguably, India's efforts to bring Kashmir into its fold can be told as part of such a story. However, such efforts need to have an underpinning of at least some kind transparent democratic process. Should Article 35A be removed, it must be removed as an expression of the will of the people, through a political process which includes the people of Jammu and Kashmir in the discussion. Or, in the very least, it has to be remembered that the Article is not some special concession to Jammu and Kashmir but the last vestige of a broken promise that India had made to it decades ago.

Sandeep Bhardwaj is a research associate with the Centre for Policy Research, New Delhi

Questions of faith at Ayodhya

We need to carefully understand the issues before the Supreme Court

SUBRAMANIAN SWAMY

This refers to A. Faizur Rahman's article "The essentiality of mosques" (*The Hindu*, August 7, 2018). He says that the Supreme Court needs to reconsider the Ismail Faruqui verdict, in which it stated that a mosque is not essential to Islam. Instead of arguing his case, Mr. Rahman blandly states: "A reading of the Koran and authentic traditions of the Prophet make clear the significance of the mosque in Islam." This is, at best, a circular argument and, at worst, a terrible obfuscation.

Misreading the Constitution

It is also a misreading of the Constitution of India to state, as the writer does, that Articles 25 and 26 guarantee Muslims an unfettered fundamental right to pray in a mosque. Fundamental rights in our Constitution are not absolute, and are subject to reasonable restrictions of morality, health, and public order.

It is now established that Babri Masjid was a structure constructed by invaders, and after demolishing a pre-existing temple. The Supreme Court in 1994 had directed the Allahabad High Court to verify this by scientific methods.

The High Court then asked the Archaeological Survey of India (ASI) to determine and verify this fact. A team of two top archaeologists, B.B. Lal and K.K. Mohammed, in 2002 deployed the most scientific tools and unanimously concluded that there was indeed an extensive temple complex in ruins under the site where the Babri Masjid structure had stood.

The High Court accepted this finding and relied on the same in depth in its 2010 judgment of

AFP

1,000 printed pages, now available in three bound volumes. It is this judgment that the Sunni Waqf Board has appealed against in the Supreme Court.

RESPONSE

Before the Supreme Court today are two sets of petitions being considered. The first is a civil suit appeal against the High Court judgment, viz., on questions of who the "disputed" Ayodhya site belongs to. The second is my writ petition seeking enforcement of my fundamental right to pray at the site where Rama was born. Many devout Hindus believe that Bhagwan Sri Rama was born at a particular spot in Ayodhya, the then capital of a flourishing kingdom of the Suryavamsa dynasty.

Imam-e-Hind

Rama is venerated as *Maryada Purushottam* and worshipped by Hindus in the north as an avatar of Vishnu, while some Tamil saints known as Nayanmars and Alwars composed many hymns and songs dedicated to his divinity. In that sense, Sri Rama was the first truly national king of India, supra region, supra varna or jati. That is why the poet Mohammed Iqbal called him 'Imam-e-Hind'.

The exact spot of the palace where Rama was born has been – and remains – firmly identified in the Hindu mind and is held sacred. This is the very area where stood, from 1528 till December 6, 1992, a structure that came to be known as Babri Masjid, put up by Babar's commander, Mir Baqi.

Posed as it is, my petition should prevail in the Supreme Court since my fundamental right is a superior right in law compared to the ordinary right to property as claimed by the Sunni Waqf Board.

It is thus to forestall the superior right of worship at Ram Janmabhoomi from prevailing, and to buy time till the next general elections, that the lawyers engaged by the Sunni Waqf Board have introduced this new prayer (which was not raised at the High Court level), of setting up a larger Constitution Bench to reconsider the 1994 five-judge Constitution Bench judgment that a mosque is not "an essential part" of the Islamic religion. This is also the view of prominent Islamic scholars.

To argue otherwise, as Mr. Rahman does, is nothing but a part of a legal strategy to obfuscate and delay the apex court judgment.

Subramanian Swamy is a member of the Rajya Sabha and a former Union Law Minister

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.

After Karunanidhi

It is not true that there is a political vacuum in Tamil Nadu following the demise of J. Jayalalithaa and M. Karunanidhi ("M. Karunanidhi, 94", August 8). The AIADMK is prone to disintegrate as it has survived only because of the strength of its personalities, whether MGR or Jayalalithaa. The present leaders have no mass base of their own; their strength comes from the support for previous leaders and their policies. However, this is not the case with the DMK, which is a cadre-based party. DMK working president M.K. Stalin was groomed by Karunanidhi and had to rise through the ranks. His public life has been one of hardship. The charge of dynasty cannot be applied to him.
A bipolar polity looks likely to continue in the State, with one force comprising the DMK, Congress and perhaps the Makkal Needhi Maiam, Viduthalai Chiruthaigal Katchi, the Left parties and others, and the other force comprising the AIADMK, the BJP, perhaps Rajinikanth's yet-to-be-launched political party and others. It looks like T.T.V. Dhinakaran has to join one of these two broad political formations to contest elections, despite pulling crowds on his own.

G. DAVID MILTON,
Kanyakumari

Politics after death

It is unfortunate that a five-time Chief Minister's family had to struggle so much after his death over the place of his burial ("After HC drama, Karunanidhi laid to rest on Marina", August 9). The AIADMK government should have shown magnanimity in allowing the DMK leader to be buried near his mentor, C.N. Annadurai. The Madras High Court verdict was thankfully a great relief. Had the court not allowed this, there would have been a huge law and order problem. It would not be hyperbole to say that the court's verdict saved the lives of many in Tamil Nadu.

S. NALLASIVAN,
Tirunelveli

While the AIADMK government was attempting to insult Karunanidhi, it was nice to see the Central government recognising the contributions of the DMK patriarch. The government accorded him a state funeral, and both the Prime Minister and the Defence Minister flew down to pay their homage. The AIADMK government's behaviour deserves condemnation, while the Central government deserves appreciation.

THARCIUS S. FERNANDO,
Chennai

Karunanidhi had himself said that maintaining Annadurai's memorial on the Marina was becoming difficult given its proximity to the sea ("Karunanidhi turned down demand for Marina memorial for Kamaraj", August 9). If this trend of constructing memorials on the beach continues, we will only have memorials of Chief Ministers on the beach many decades from now. It is time to put a stop to this practice and maintain the beauty of the Marina. There should be an exclusive place earmarked for memorials somewhere in the city, not on its shores.

D. SETHURAMAN,
Chennai

While DMK got its way, one cannot fault the State government as it encountered petitions seeking to stop the Marina from being converted into a cemetery or memorial.

N.J. RAVI CHANDER,
Bengaluru

Lateral entry debate

Lateral entry of experts into the bureaucracy is routine in countries like the U.S., Germany and New Zealand ("Reforming the civil services", August 9). India definitely needs some field experts to formulate its policies and take key decisions. Domain experts like Manmohan Singh and Montek Singh Ahluwalia were after all brought in through lateral entry.

TALA B. RAGUNATH,
Thanjavur

The objective is to bring greater proficiency in administration to manage new challenges. However, this policy needs to be impartial, and the appointment decisions should be taken independently. It should not become a tool for the government to appoint only those it wants in administration. A bureaucrat encounters many administrative hurdles and knows how to solve them. Will lateral entry candidates with no experience in administration be able to perform effectively?

GAGAN PRATAP SINGH,
Noida

The problem of begging

Begging is a social problem, so the court's decision is right ("Delhi High Court decriminalises begging in the national capital", August 9). Poverty, unemployment, disability, etc. are responsible for people begging. The government, civil society, the police and citizens have to work together to solve this problem.

CHITRAKANT SINGH,
Greater Noida

Cleaning the Ganga

No amount of money can clean the Ganga ("To help clean the Ganga, visit an ATM", August 9). Crores have already been spent on the Clean Ganga Project but the river remains as polluted as ever. What is required is the will to clean the river and tough decisions by the government. We must stop the inflow of pollutants from industries, households and hotels into the river. No bodies should be dumped into the river, and pujas on the banks of the Ganga should be reduced or stopped.

G. PADMANABHAN,
Bengaluru

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