BCCI revamp

The Supreme Court has been pragmatic in tweaking the Lodha norms on running cricket

Two years after accepting the Justice R.M. Lodha Committee's recommendations, the Supreme Court has now extended some concessions to those aggrieved by the rigorous rules, which aimed to revamp cricket administration in the country. The reasoning given in the order of a three-judge Bench headed by Chief Justice Dipak Misra suggests that it is a pragmatic modification rather than a significant climbdown. Justice Lodha, a former Chief Justice of India, however, feels that the court has now knocked out the foundation of his recommendations. The most significant change concerns the cooling-off period prescribed for office-bearers before they are allowed to contest for a subsequent term. Against the panel's view that every office-bearer of the Board of Control for Cricket in India, in the national board or in a State association, should have a three-year break after a three-year term, the court has now allowed two three-year terms – that is, a tenure of six years – before the mandatory break kicks in. The logic behind a cooling-off period is that office-bearers should not be given lengthy tenures that enable them to establish personal fiefdoms. The argument against it is that the experience and knowledge that an office-bearer gains over three years should not be frittered away, and a second term could help consolidate such learnings. The Bench has accepted the logic behind this and chosen to defer the cooling-off period until she completes two terms. Given that there is a nine-year aggregate limit as well as an age limit of 70 for any office-bearer, this change may not amount to any significant dilution of the core principle that there should be no perpetuation of power centres.

The Lodha panel had also favoured the 'one State, one vote' norm. This meant that an association representing a State alone should be recognised as a voting member of the BCCI, while associations representing a region within a State or entities that do not represent a territory should not have the same vote or status. This norm has been overruled. Gujarat and Maharashtra will have three votes each, as the associations of Baroda and Saurashtra in Gujarat, and Mumbai and Vidarbha in Maharashtra will have separate votes. In this, too, the court has accepted the reasoning that associations that had contributed significantly to Indian cricket need not be stripped of their full membership. It is now up to the administrators of the future to dispel Justice Lodha's apprehensions that this may lead to manipulation of votes. Whether the changes adopted by the court while finalising a new constitution for the BCCI differ in significant ways from what was proposed by the Lodha committee will be a matter of debate. However, judicial intervention has been immensely helpful in making cricket administration more efficient and professional, and addressing the credibility deficit of recent times.

A complicated man

V.S. Naipaul was among the greatest and most provocative writers of our times

Vidiadhar Surajprasad Naipaul, who passed away at his London home on August 11 just six days short of his 86th birthday, will continue to challenge his readers and critics after death as he did in a writing career spanning more than five decades. It's the way with great writers, and Naipaul's claim to being among the greatest of them was settled long before he won the Nobel prize in 2001 – but he defied simple appraisals more than anybody else. To read Naipaul, to listen to him, to follow his life story, was to be perpetually nudged to reassess not just him, but also his subject matter and one's own view of the world. He once said, "All my work is really one. I am writing one big book." In that big book, he kept pushing back the chronological beginnings to understand how colonialism and migration shaped the modern world, and travelling ever wider to examine how post-colonial societies shape-shifted. It was an endeavour that started, and never veered too far, from his own biography. Born in Trinidad to parents of Indian origin, whose forebears had come to the West Indies as indentured labour, Naipaul was consumed by one ambition: to be a writer. It was, in large measure, acquired from his father, a journalist in Port of Spain struggling with the needs and bickering of a sprawling family and the lack of intellectual wherewithal to realise his dream. His father's story would inspire Naipaul's *A House for Mr Biswas* (1961), part of an early-life burst of brilliant fiction that began with *Miguel Street*, written when he was just out of Oxford University, and concluded in 1979 with *A Bend in the River*.

It was Naipaul's travels, however, that spanned the greater part of his writing life as he crafted his own way of seeing the world. He said in his Nobel lecture that as a child in Trinidad he felt himself "surrounded by areas of darkness", and these became his subjects. He travelled across continents, always with a theme in mind. He opened up lines of inquiry on identity and progress. His unsparing eye and spare, clear prose ensured that readers could not un-see what he saw, whether they were in agreement or not. He was criticised for depicting the developing world through an imperial filter; he was accused of Islamophobia in his travels in Muslim countries; he raised hackles with his India trilogy – *An Area of Darkness* (1964), *A Wounded Civilisation* (1977), *A Million Mutinies Now* (1990). But he presciently bookmarked the debates that coming events would spark. There was definitely low-grade bigotry at play, and misogyny, too. Naipaul's writings are too important to be overlooked on account of his intolerance; equally, his opinions cannot be excused while understanding his literary legacy.

Undoing a legacy of injustice

The Delhi High Court order striking down the Begging Act heeds the Constitution's transformative nature

GAUTAM BHATIA

In 1871, the colonial regime passed the notorious Criminal Tribes Act. This law was based upon the racist British belief that in India there were entire groups and communities that were criminal by birth, nature, and occupation. The Act unleashed a reign of terror, with its systems of surveillance, police reporting, the separation of families, detention camps, and forced labour. More then six decades after independent India repealed the Act, the "denotified tribes" continue to suffer from stigma and systemic disadvantage.

Instance of dehumanisation

The Act was one strand of a web of colonial laws that dehumanised communities and ways of life. The colonial administrators were particularly concerned about nomadic and itinerant communities, which by virtue of their movements and lifestyle were difficult to track, surveil, control, and tax. Through laws such as the Criminal Tribes Act, and other legal weapons such as vagrancy laws, the regime attempted to destroy these patterns of life, by using criminal laws to coerce communities into settlements and subjecting them to forced labour.

Independence brought with it many changes, but also much continuity. Despite the birth of a Constitution that promised liberty, equality, fraternity, and dignity to all, independent India's rulers continued to replicate colonial logic in framing laws for the new republic. They continued to treat individuals as subjects to be controlled and administered, rather than rights-bearing citizens. One of the most glaring examples of this is the Bombay Prevention of Begging Act. The Begging Act was passed in 1959 by the State of Bombay, and has continued to exist in as many as 20 States and two Union Territories. But last week, in a remarkable, landmark and long overdue judgment, the Delhi High Court struck it down as inconsistent with the Constitution.

The minutiae

What does the Begging Act do? It criminalises begging. It gives the police the power to arrest individuals without a warrant. It gives magistrates the power to commit them to a "certified institution" (read: a detention centre) for up to three years on the commission of the first "offence", and up to 10 years upon the second "offence". Before that, it strips them of their privacy and dignity by compelling them to allow themselves to be fingerprinted. The Act also authorises the detention of people "dependant" upon the "beggar" (read: family), and the separation of children over the age of five. Certified institutions have absolute power over detainees, including the power of punishment, and the power to exact "manual work". Disobeying the rules of the institution can land an individual in jail.

From its first word to the last, the Begging Act reflects a vicious logic. First, there is the definition of "begging". The Act defines it to include "soliciting or receiving alms, in a public place whether or not under any pretence such as singing, dancing, fortune telling, performing or offering any article for sale" and "having no visible means of subsistence and wandering about or remaining in any public place in such condition or manner, as makes it likely that the person doing so exist soliciting or receiving alms."

NAGARA GOPAL

Not only do these vague definitions give unchecked power to the police to harass citizens but they also reveal the prejudices underlying the law. The pointed reference to "singing, dancing, fortune telling, performing or offering any article for sale" makes it clear that the purpose of the Act is not simply to criminalise the act of begging (as commonly understood), but to target groups and communities whose itinerant patterns of life do not fit within mainstream stereotypes of the sedentary, law-abiding citizen with a settled job. And the reference to "no visible means of subsistence and wandering about" punishes people for the crime of looking poor – but it also reflects the lawmakers' desire to erase from public spaces people who look or act differently, and whose presence is perceived to be a bother and a nuisance. The Begging Act encodes into law the vicious prejudice that recently saw a prominent institution putting up spikes outside its Mumbai branch, to deter rough sleeping (they were removed after public outrage).

Once individuals fall within its clutches, the Begging Act effectively renders them invisible, by confining them to "certified institutions" after a truncated, summary judicial procedure. Like the poorhouses of 19th century Europe, it is based on a philosophy of first criminalising poverty, and then making it invisible by physically removing "offenders" from public spaces. Effectively, it places a cordon sanitaire around the poor and the "undesirable", keeping them from accessing spaces reserved for the use of "respectable" citizens. For these people, the constitutional guarantees of pluralism and inclusiveness do not exist.

The authorities have not hesitated to use the Begging Act as a weapon. Just before the 2010 Commonwealth Games, the Delhi government was engaged in combing operations to take beggars off the street, lest their presence embarrass the nation in the eyes of foreigners. Such operations are also a regular part of preparing for national events, such as Independence Day and Republic Day.

The judicial view

In its judgment delivered last week (*Harsh Mander v. Union of India* and *Karnika Sawhney v. Union of India*), a Bench of the Delhi High Court presided over by the Chief Justice, held that the Begging Act violated Article 14 (equality before law) and Article 21 (right to life and personal liberty) of the Constitution. In oral argument, the government conceded that it did not intend to criminalise "involuntary" begging. The High Court noted, however, that the definition of begging under the Act made no such distinction, and was therefore entirely arbitrary. More importantly, it also held that under Article 21 of the Constitution, it was the state's responsibility to provide the basic necessities for survival – food, clothing, shelter – to all its citizens. Poverty was the result of the state's inability – or unwillingness – to discharge these obligations. Therefore, the state could not turn around and criminalise the most visible and public manifestation of its own failures – and indeed, penalise people who were doing nothing more than communicating the reality of their situation to the public.

The Delhi High Court's judgment marks a crucial step forward in dismantling one of the most vicious and enduring legacies of colonialism. It is as significant and important as a judgment delivered by the same court more than nine years ago, when it decriminalised homosexuality (*Naz Foundation v. NCT of Delhi*). It is perhaps fitting that this judgment comes just a few days before the Supreme Court is likely to vindicate Naz Foundation after a 10-year legal battle. Both *Naz Found*ation and *Harsh Mander* recognise that our Constitution is a transformative Constitution, which seeks to undo legacies of injustice and lift up all individuals and communities to the plane of equal citizenship.

However, it remains only one step forward. Hopefully, other High Courts will follow suit and the constitutionality of vagrancy laws as well as other provisions in the Indian Penal Code that criminalise status will also be called into question. Nonetheless, it is important to remember one thing: a court can strike down an unconstitutional law, but it cannot reform society. Poverty – as the Chief Justice recognised in her judgment – is a systemic and structural problem. The Delhi High Court has done its job in striking down a vicious law that criminalised poverty. But it is the task of the Legislative Assembly and the government to replace the punitive structure of the (now defunct) Begging Act with a new set of measures that genuinely focusses on the rehabilitation and integration of the most vulnerable and marginalised members of our society.

Gautam Bhatia is a Delhi-based lawyer

The inexorable wheels of justice

India's legal history is replete with interesting cases of religious faith versus the law

N.L. RAJAH

The recent hearings in the Supreme Court relating to the Sabarimala case have turned the spotlight on the status of religious faith in a system governed by the rule of law and the Constitution. Any attention bestowed on such discussions by a person of faith and belief appears to leave the observer with an uneasy feeling that the Constitution is the prime suspect in these proceedings. It leaves him with the uncomfortable thought that from the time of the advent of the Constitution, no religious practice has been safe in a system of Constitution-controlled governance. Nothing could be farther from the truth. The clash between religious faith and the law is not of recent origin and it would be unfair to lay the blame at the doorstep of the Constitution. On the other contrary, it is an inevitable consequence of human evolution.

For centuries, religious faith and the principles it enunciated were the "law" that regulated society. But in a democracy with the Constitution as a guiding force, it is natural that the new order would challenge the old, and the litigative battles that we see in court today are the struggles between that old order and the new in the path of human evolution.

This is, however, not to say that the struggle between the law and religious faith did not exist before the Constitution came into existence. There were people who asserted the supremacy of the law over religious belief even in the pre-Constitution days. One such example was the "Tirupathi Mahant case" in the Madras High Court.

The Tirupathi case

Its facts are as follows. The East India Company, till the middle of the 19th century, oversaw the management and administration of the properties of the deity, Venkateswara or Srinivasa (or Balaji). After the Madras Regulation of 1817 was passed, the temple came under the Board of Revenue which supervised it through the District Collector. However, a movement in England (around 1840) disapproved a Christian company (the East India Company) administering Hindu and Muslim religious institutions. Consequently, the administrative reform management

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of the temple was handed over to a mahant who, as the head of that mutt, had his headquarters in Tirupathi. He was also commonly referred to as the Mahant of Tirupathi.

When a flagstaff for the temple was erected, devotees donated large sums of money to acquire gold coins. These were to be placed in a vessel which was then buried at the base of the flagstaff. But soon a charge of criminal breach of trust and misappropriation was made against the mahant, with the allegation that the coins had been substituted with copper coins.

Such a charge could have been proved or disapproved only by digging up the base of the flagstaff. But religious faith proved to be an obstacle. The mahant pleaded that the flagstaff could not be dug up after it had been sanctified and installed and such a course would prove calamitous to the sentiments of worshippers.

Interestingly, the high priest, much against public sentiment, persevered and filed an application to have the vessel produced. The Magistrate ordered the application as prayed for. Against the order of the Magistrate, a revision petition was filed before the Madras High Court which in turn led to one of the most sensational cases in its history.

A legal battle ensued between two of the greatest legal luminaries. Subramania Iyer (who went on to become a judge of the Madras High Court) appeared for the high priest, while Eardley Norton, a formidable barrister, appeared for the mahant. The case was heard by the Bench of Chief Justice Arthur Collins and Justice Muthusami Iyer.

Upholding justice

P.S. Sivasamy Iyer, an advocate general and another High Court luminary, had a ringside view of the proceedings. In his memoirs he recalled: "He (Norton) invoked the religious sanctity of flagstaff and he appealed to the court to avoid a sacrilege, which could ring throughout the orthodox world, and he advanced every possible argument against digging up the site of the flagstaff. Norton went on for three hours. Sir Subramania Iyer's turn then came. He spoke for less than an hour, but the effect was electric. All of Norton's arguments were smashed completely within the span of less than half an hour. He wound up his magnificent speech, a speech of real eloquence, with that well-known saying, *Fiat justitia ruat caelum* which means as you know, 'Let justice be done even though the heavens fall'. It was one of the best speeches I have ever heard from him, compact, condensed, and full of vigour and eloquence, just like him."

The Bench upheld the Magistrate's order, (with the judgment delivered by Justice Muthuswami Iyer). It was a revelation. The vessel had no gold, just base metals.

Therefore, even before the adoption of the Constitution, our legal history is replete with interesting cases of religious faith versus the law. If for any reason the Sabarimala case were to induce heartburn among its ardent devotees, whatever be their sentiments, they must bear in mind that the Constitution cannot be blamed. For in the ultimate analysis, as Subramania Iyer appropriately observed, "*Fiat justitia ruat caelum*.

N.L. Rajah is Senior Advocate, Madras High Court

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.

Woeful neglect

One cannot fight nature – as the vigorous monsoon shows – but at the same time one cannot help ponder over the colossal waste of river water in the southern States.

Most of the southern States are in dispute with each other over the sharing of river water but seem to be doing precious little in ensuring water management ("At this time of plenty, a sense of déjà vu", August 12). Going by the data cited, perhaps this is the time the issue of the inter-linking of rivers must be thought of.

NAGARAJAMANI M.V.,
Hyderabad

■ As a country, we appear to lack foresight as far as water management is concerned. It is a shame that the rain bounty this year has been allowed to flow unchecked into the sea. A national policy should be drawn up on how to store a deluge of this volume.

A. JAINULABDEEN,
Chennai

Indian aid

There may be a steep decline in Indian aid to other SAARC nations but how can we ignore the financial might of China? Beijing is leveraging this huge advantage to boost its regional influence. The Hambantota port (Sri Lanka), a part of the Belt and Road Initiative in Pakistan, major investments in Nepal and other moves in the Maldives and the Indian Ocean Region cannot be missed. India needs to factor this in.

JELVIN JOSE,
Kunnappilly, Thrissur, Kerala

New eco-threat

The fascinating story of the "invasive bullfrog" in the Andaman Islands is a lesson about the consequences of tampering with nature ('Ground Zero' page, "The Andamans' new colonisers", August 11). These amphibians are a common sight in coastal Andhra Pradesh and are called '*Godhuru Kappa*' in Nellore and Prakasam districts. They thrive in the open wells and at quarry sites. They appear in armies during the monsoon. Their croaking fills people with dread as they also herald the arrival of large snakes. One hopes that the authorities can stop the bullfrogs from reaching the Nicobar islands.

PUSHPA DORAI,
Nurani, Kerala

Access eased

The government's move to remove restrictions on foreigners from visiting 29 inhabited islands in the Andamans may be a major step to boost tourism. But one wonders whether concerns to preserve the identity and culture of the tribals in these islands have been addressed adequately. Tribals have a right to their identity and it is the responsibility of the government, visitors and tourist guides to ensure that tribal values and privacy are respected at all costs. One hopes there are no repeats of a well-publicised case a few years ago, where the Jarawas were subject to unspeakable indignities by tourists.

CHITRAKANT SINGH,
Greater Noida, Uttar Pradesh

Note to mothers

There is no quarrel with the fact that breastfeeding plays a crucial role in ensuring a healthy infanthood but the writer ('Being' page, "A note to mothers", August 12) fails to mention how most mothers in India barely focussed on this until recently. Many women have to share the burden of labour and barely get time to breastfeed their infants, leave alone exclusive breastfeeding for the first six months. It is only recently that even working women in the organised sector were granted paid maternity leave. The issue is about the nutrition that is available to many mothers because of poverty or entrenched superstitions. The focus has to be in creating an environment that facilitates breastfeeding, and not only the awareness about it.

SHIVPRIYA CHATURVEDI,
Bengaluru

Rafi's renditions

One more song can be added to the list of memorable (non-film) Mohammed Rafi numbers (Friday Review, "The legend lives on...", August 12). It is the recorded tribute to Mahatma Gandhi brought out by HMV just a few weeks after he was assassinated. Titled 'Bapu ki amar kahani', the song was in four parts in two 78-rpm records. Penned by brilliant song-writer Rajendra Krishan with music composed by the popular music director duo Husnlal Bhagatram, Rafi breathed life into in characteristic style.

SUKUMAR SHIDORE,
Pune

Hopes and a contingent

One hopes that India's move to send an 804-member contingent, which includes 572 athletes, to the Asian Games in Indonesia will fetch rich dividends. As most of the sportspersons are in athletics, canoe-kayaking, hockey and shooting, we look forward to a medal haul ('Sport' page, August 12).

YOJIT CHAUDHURY,
Rohtak, Haryana

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CORRECTIONS & CLARIFICATIONS:

The Editorial , "Endless war", on Saudi Arabia's strike in Yemen (Aug. 11, 2018), erroneously referred to an attack on a bus in *southern* Yemen. The attack was in *northern* Yemen.

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