



Change & continuity

Vijay Rupani and Jairam Thakur will be judged by the same criterion: performance

A leader is as good as the party he leads. But in Gujarat and Himachal Pradesh, the Bharatiya Janata Party found the performance of its chief ministerial candidates at variance with that of the rest of the party. Vijay Rupani, the incumbent Chief Minister, won his Rajkot West seat comfortably, even as the BJP conceded ground to the Congress in Gujarat. Prem Kumar Dhumal lost in Sujanpur, but the BJP won big in Himachal Pradesh to wrest power from the Congress. After the poor showing in Gujarat, the re-nomination of Mr. Rupani as the legislature party leader was not automatic; there were other contenders, including his deputy, Nitin Patel. The BJP was under some pressure to send a positive signal to the Patidar community, large sections of which appeared to have shifted their allegiance to the Congress. But the party settled for another term for Mr. Rupani, not wanting to pin the blame for the below par performance on him. After all, the campaign had been led from the front by Prime Minister Narendra Modi and party president Amit Shah. Ignoring Mr. Rupani's claim would only have meant laying the groundwork for further disaffection within the party. In Himachal Pradesh, the situation was, in many ways, very different. Despite losing his seat, Mr. Dhumal was not out of contention for the post of Chief Minister till the very end, with many newly elected members of the legislature offering to vacate their seats for him. But while recognising that Mr. Dhumal did indeed boost his chances in several seats, the BJP opted for five-time MLA Jairam Thakur as the new Chief Minister. Evidently, the reasoning was that rewarding Mr. Dhumal would be interpreted by detractors as a show of disrespect to the verdict of the people in his constituency. Also, the BJP's ideological mentor, the Rashtriya Swayamsevak Sangh, is known to be opposed to rewarding with ministerial posts those who have lost an election. That Mr. Thakur is a former pracharak would only have made the RSS bring greater force to bear upon the BJP in this regard.

While the choice of Mr. Rupani is a vote for continuity, it is not an endorsement of everything that he did in the short period he has been in power in Gujarat. To rule in Mr. Modi's name is one thing, but to not be a proactive agent in governance is quite another. Mr. Rupani will continue to be on test under the keen eyes of the Modi-Shah combine. The BJP's rural backing seems to have shrunk and the party depended heavily on its core support base of traders and the urban middle class to win the election. In Himachal, Mr. Thakur will likely have a freer hand, but he too will be under watch. Unless he can help his party beat the incumbency disadvantage, Mr. Thakur will not be seen as having done his job. Retaining power is not as easy as re-gaining power.

After the sanctions

Diplomacy remains the best option to bring North Korea to disarmament talks

The fresh round of economic sanctions imposed unanimously by the UN Security Council on North Korea is a predictable response to mounting international frustration over the nuclear stand-off. The measures come days after the U.S., echoing suspicions in other countries, charged the North Korean government with the world-wide 'WannaCry' cyberattacks in May. The sanctions include an 89% curb on refined petroleum imports into North Korea, stringent inspections of ships transferring fuel to the country, and the expulsion of thousands of North Koreans in other countries (who send home crucial hard currency) within two years. Despite the crippling nature of the curbs, there is some good news on this imbroglio. As on previous occasions, Beijing and Moscow were able to impress upon the Security Council the potentially destabilising and hence counterproductive impact of extreme measures. This is significant given the intercontinental ballistic missile that Pyongyang launched in November. It was described by U.S. Defence Secretary Jim Mattis as technically more sophisticated than anything witnessed previously, and the North Korean regime's claim that it could deliver nuclear warheads anywhere in North America has been viewed with concern. However, even as China and Russia approved the latest measures, they continued to state their preference for diplomatic engagement. It remains to be seen how much more pressure Beijing can exert upon Pyongyang.

The stated aim of the sanctions regime has been to force North Korea to halt its nuclear programme and start disarmament negotiations. In September, North Korea detonated its sixth underground nuclear device, which it claimed was a hydrogen bomb. That assertion remains unverified, but experts believe the explosion was many times more powerful than previous detonations. The development has served as a reminder to the U.S. that the scope for military options may be increasingly narrowing. Against this backdrop, a revival of stalled peace negotiations between the P-5 nations and North Korea may be the only realistic alternative on the horizon. The successful conclusion of the 2015 civilian nuclear agreement between the P-5 plus Germany and Iran affords a constructive template to move ahead with North Korea. Certainly, U.S. President Donald Trump has delivered a scathing blow to the Iran deal, even as he stopped short of scrapping it. Iran's continued compliance with the inspections of the International Atomic Energy Agency may not mean much to Mr. Trump, given his overall distrust of multilateral institutions. But that is no reason why other big powers should not pursue the diplomatic effort with redoubled energy. Countries that backed the recently adopted UN nuclear weapons abolition pact should likewise lobby Pyongyang.

Countering growing inequality

Indian social policy must raise health and education levels all around, as China has done



PULAPRE BALAKRISHNAN

The release recently of the *World Inequality Report 2018* has brought into focus an aspect of economic progress in India. This is the continuous growth in inequality here since the mid-1980s. To grasp this, consider the reported finding that the top 1% of income earners received 6% of the total income in the early 1980s, close to 15% of it in 2000, and receives 22% today. As this is a report on a global scale, we can see the trend in inequality across the world, providing a comparative perspective across countries.

In particular, it enables a comparison of economic progress made in India and China. This is not flattering of India. Since 1980, while the Chinese economy has grown 800% and India's a far lower 200%, inequality in China today is considerably lower than in India. The share of the top 1% of the Chinese population is 14% as opposed to the 22% reported for India. The authors go on to emphasise that growing inequality need not necessarily accompany faster growth, observing that inequality actually declined in China from the early 21st century. By then China had grown faster for longer than most countries of the world ever did.

Basket of indicators

The findings in the *World Inequality Report* serve as grist to the mill that is the study of the progress of nations. But before we proceed to reflect on them we may pause to consider their underlying methodology. First, the results are based on the share of top incomes. This



is not invalid but some of the findings may alter if we adopt measures of inequality that characterise the entire distribution. To be precise, the inequality ranking of China and India may now reverse. But this need not hold us back as it is evident that China's performance is far superior all round to that of India. China has grown faster, has far lower poverty and far higher average income, and its income distribution is less unequal at the very top. The World Development Indicators data released by the World Bank show that per capita income in China was five times that of India in 2016 while the percentage of the population living on less than \$1.90 a day was about 10 times less at the beginning of this decade. India has a forbidding gap to traverse in all directions, but for now let us focus on inequality.

It is the comparative perspective contained in the Report that makes it useful. India-based researchers have for some time now pointed out that the country is becoming less equal since 1991. Also, we need not turn to the experience of China to recognise that growth need not be unequalising. We know independently that inequality in India declined for three and a half decades since 1950 even as the economy grew steadily, though maybe not spectacularly. It

is important to comprehend this outcome if we are to understand the source of inequality in India, not to mention why India lags China.

Now, is a comparison of the progress made in China and India meaningful at all? Yes it is, for though representing different political systems, they had both been large agrarian economies at similar levels of per capita income when they had started out in the early 1950s. Moreover, the absence of democracy in a society does not by itself guarantee faster economic growth and greater income equality. For a populous poor country to lift itself to a higher growth path and stay there requires imaginative public policy and a steady governance. We can see this in the divergent economic histories of North and South Korea. So what is it that China did better than India?

The Chinese clue

If there is to be a meta narrative for China's economic development, it is that its leadership combined the drive for growth with the spreading of human capital. Human capital may be understood as a person's endowment derived from education and robust health. When a population is more or less equally endowed, as it was in China when it began to draw ahead,

the human capital profile of a country may be represented by a rectangle. Now the returns to labour would be relatively equal compared to the country in which the distribution of human capital is pyramidal, which is the case for India. To see the latter better, note that the share of the Indian population with secondary schooling is less than 15%. China had by the early 1970s achieved the level of schooling India did only by the early 21st century. The spread of health and education in that country enabled the Chinese economy to grow faster than India by exporting manufactures to the rest of the world. These goods may not have been the byword for quality but they were globally competitive, which made their domestic production viable. The resulting growth lifted vast multitudes out of poverty. As the human capital endowment was relatively equal, most people could share in this growth, which accounts for the relative equality of outcomes in China when compared to India. An ingredient of this is also the greater participation of women in the workforce of China, an outcome that eludes India.

While concluding this brief account of China's progress, two points may be made. China is no exception to the general history of progress made in East Asia, right down to the authoritarianism, only that China has remained even more authoritarian. This makes it appropriate to term progress in the country as growth through human capital-accumulation for there can be no human development without democracy, whatever may be the health and educational attainments of a population. Recent revelations suggest that the massacre of pro-democracy protesters at Tiananmen Square in 1989 was far greater than believed to be.

This brings us back to India. India has lower per capita income, persistent poverty and by all accounts rising inequality. It may be said in the context that economic progress here has been neither efficient nor equitable. Democracy per se cannot be held responsible for this. There are States in India with superior social indicators than China. This shows that not only is democracy not a barrier to development but also that similar political institutions across India have not resulted in same development outcomes across its regions. Nor can we remain complacent that democracy is combined with superior social indicators in some parts of India when income levels are lower here than what China has demonstrated is achievable.

Deepening democracy

Given the growing inequality in India, the direction that public policy should now take is evident. There is need to spread health and education far more widely amidst the population. India's full panoply of interventions, invariably justified as being pro-poor, have not only not spread human capital, but they have also not been able to prevent a growing income inequality.

A ritualistic focus on the trappings of democracy, from frenetic election campaigns to stylised skirmishes in the legislatures, has not worked to deliver its promise. We now need to reorient public policy so that the government is more enabling of private entrepreneurship while being directly engaged in the equalisation of opportunity through a social policy that raises health and education levels at the bottom of the pyramid.

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How India rejects bad patents

Strong standards for patents have filtered the bad from the good, with the least administrative and financial burden

FEROZ ALI & SUDARSAN RAJAGOPAL

In 2005, India made some remarkable amendments to the Indian Patents Act of 1970, to keep medicines affordable in the country. Since then we have faced a significant blowback not just from the global pharmaceutical industry but also from developed world including from the U.S. and the European Union.

At the heart of the matter are the strong standards for patents which India introduced to promote genuine innovation across all fields of technology, in perfect compliance with the World Trade Organisation (WTO) norms. In contrast, developed countries have weaker standards as a result of incessant lobbying by corporate behemoths. Twelve years later, we now know what it means: India rejects bad patents in far greater number than developed countries.

The background

The findings of a new study by us which examined all 1,723 pharmaceutical applications rejected by the Indian Patent Office (IPO) between 2009 and 2016 have been an eye-opener.

Section 3(d) of the Indian Patents Act, a provision introduced to restrict the patenting of new forms of known pharmaceutical substances, became the subject of international attention after its use

in rejecting a patent application by Novartis for the anti-cancer drug, Gleevec. We found that exceptions to patentability in Section 3 of the Act, which includes Section 3(d), were responsible for 65% of all rejected pharmaceutical patent applications.

Over its short lifetime, Section 3(d) has survived a challenge to its constitutionality before the Madras High Court, and Novartis's fight against the rejection of its patent that went to the Supreme Court. Both courts ruled decisively to uphold the legality of Section 3(d). The United States Trade Representative has also repeatedly rebuked India for this provision in its Special 301 Report, despite its perfect compliance with WTO norms. While the world's attention is still fixed on this legal experiment that the Indian Parliament introduced into law, there has been a dearth of information on how the IPO has applied Section 3(d). We found that it filters the bad from the good, with the lowest possible administrative and financial burden.

Rejected using Section 3(d)

An astonishing 45% of all rejected pharmaceutical patent applications cited Section 3(d) as a reason for rejection: the applications were identified as mere variants of known compounds that lacked a demonstrable increase in therapeutic value.



Between 1995 and 2005, prior to our new law, India provided a temporary measure to receive patent applications for pharmaceutical products at the IPO, called the mailbox system. Though introduced in 2005, the use of Section 3(d) gradually increased from 2009 when mailbox applications were examined. The spike coincides with the Supreme Court's ruling in the Novartis case, in April 2013. It would appear that this judgment provided legal certainty to Indian patent law in general, and Section 3(d) in particular, enabling the IPO to weed out trivial innovations.

At the patent office

In the last decade, we found that the IPO rejected about 95% of all pharmaceutical patent applications on its own. Only 5% were through the intervention of a third party, such as a pre-grant opponent. Our basic patentability criteria, that the invention should be

new, involve an inventive step (also known as non-obviousness), and should be capable of industrial application, were the most frequently used grounds for rejection, followed by the exceptions to patentability grounds in Section 3.

Section 3(d) invaluablely equips the IPO with a yardstick to evaluate applications that are merely trivial innovations over existing technology. In cases where the invention is a variant of a known substance, the criterion for patentability is proof of a necessary improvement in its performance for its designated use, i.e., increased efficacy. In the context of pharmaceuticals, as was the case involving Novartis, this translates to evidence of an improvement in therapeutic efficacy. In other words, trivial innovation must result in a far better product in order to qualify for patent protection.

Within the arcane world of patent law, an argument against provisions such as Section 3(d) is that it is no more than an extension of one of the basic requirements of patentability: non-obviousness. Certainly, for an application to be deemed non-obvious, it has to establish a technical advance over what was known before.

But non-obviousness standards are more effectively applied in invalidity proceedings before a court of law than by officials at the IPO. The advantage that a provision such as Section 3(d) provides

is the ability to question an application at the IPO itself without having to go through expensive and time-consuming litigation. The high cost of litigation poses significant barriers. Cases are often settled before reaching a conclusion, in pay-for-delay settlements negotiated by patent owners, where generic manufacturers are essentially paid to stay off the market. Patent litigation is expensive, but it is the patient who eventually pays a higher price – by being subject to exorbitant medicine prices, driven by the unmerited exclusivity that bad patents create.

As a check

Without Section 3(d), the Indian public would have to bear the burden of invalidating a bad patent through litigation.

India is certainly not alone in facing two connected challenges: constrained government budgets and urgent public health needs. As Section 3(d) has been efficient in separating the bad patents from the good in India, it would be a wise move for other developing countries, grappling with similar challenges, to incorporate similar provisions in their law.

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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.

Meeting Kulbhushan

Though the wife and mother of Kulbhushan Jadhav, who is being held in Pakistan on charges of spying, were allowed to finally meet him in Islamabad, it is unfortunate that there was not much communication possible ("Jadhav meets family in Islamabad", December 26). There was only a semblance of a conversation under the watchful eyes of Pakistani officials, and monitored with CCTV cameras. The Government of India must continue to build pressure on Pakistan and secure Jadhav's release.

N.J. RAVI CHANDER, Bengaluru

■ Though there is no ground for Jadhav's arrest, his incarceration and pending death penalty for alleged

espionage activities, the world knows that it is a pressure tactic being adopted by Pakistan. The picture on the front page was worth a thousand words; the expectant eyes of Jadhav's mother and his wife are poignant. India should examine using every possible channel to save him from the death row. Even approaching China, an ally of Pakistan, should be thought of.

S. KUMAR, Chennai

■ Pakistan has moved only a bit because of international pressure and opinion. Going through the details in the report, it appears that the meet was a cruel joke and a drama. India should continue its legal/diplomatic battle and ensure that the former naval officer is freed.

S.V. VENKATKRISHNAN, Bengaluru

■ To extract a favour from Pakistan is a very tough task. Therefore, a miracle happened when Pakistan allowed the family to visit him after Himalayan manoeuvring. The permission granted to them to see and talk to him even through a glass barrier is by itself a boon. This being the position, there is no point in picking holes in the arrangement made. This is likely to harden the attitude of Pakistan against other Indian prisoners in general and Kulbhushan Jadhav in particular. India should control the urge to muddle the issue, learn to be patient and take one step at a time.

ROHITH SUNDARESAN, Coimbatore

R.K. Nagar poll result

A close observation of political events in Tamil

Nadu conveys two things (Editorial - "Cash and churn", December 26). First, public memory is short. The anger and hatred shown towards the Sasikala family has almost disappeared after the emergence of rebel AIADMK candidate T.T.V. Dhinakaran and his victory in the R.K. Nagar constituency by-election. Second, it looks as though Tamil Nadu is moving towards political instability even though one-by-election result cannot decide the political trend in a State. There is also a message for the Dravida Munnetra Kazhagam, which is the principal opposition party. It needs to be careful about its future political and not underestimate the political manoeuvring capabilities of other parties.

MEGHANA A., Chennai

■ The surge in favour of Sasikala's nephew was palpable, but few would have predicted that he would end up toppling even the two established Kazhagams of Tamil politics. Even though R.K. Nagar voters have bestowed a kind of legitimacy on the Sasikala faction, it is somehow unacceptable that someone should get to call the shots on the basis of familial links with Jayalalitha's household. Tamil Nadu is an advanced State and deserves enlightened leadership, not the overlordship of those who are imminently unqualified. Mr. Dhinakaran's victory also underlines the fact that the 'revolving door' electoral politics of Tamil Nadu is far from over.

MEGHANA A., Shell Cove, New South Wales, Australia

Questionable

Banning the airing of "explicit" contraceptive advertisements on television between 6 a.m. and 10 p.m. will not serve any purpose (Editorial page, "Flawed, in the name of indecency", December 25). The youngsters of today are well-informed about human biology. Most films today have provocative and romantic scenes which children are free to watch at any time. Such scenes are bound to "contaminate" their minds. It would be prudent to introduce the subject of sex education in schools to create awareness. Don't we teach children about a "good" and a "bad touch"? Then, why not educate them about safe sex?

PREM K. MENON, Mumbai

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