



Chabhar tidings

As India takes over operations in the Iranian port, the possibilities and challenges are huge

The opening of the first office of Indian Ports Global Limited at Iran's Chabhar and the takeover of operations of the Shahid Beheshti port is a milestone in India's regional connectivity and trade game plan. Chabhar port opens up a permanent alternative route for trade with Afghanistan and Central Asia, given the hurdles in the direct route through Pakistan. It facilitates India's role in Afghanistan's development through infrastructure and education projects. And it gives India's bilateral ties with Iran, a major oil supplier and potential trade market for India, a big fillip. India has helped develop the Shahid Beheshti port with these outcomes in mind, and has been given the contract to manage it for 18 months. It will be important to operationalise the port quickly and smoothen the route to Afghanistan. The decision by India, Afghanistan and Iran to hold an international event in February 2019 to promote Chabhar and to study ways to make the route more attractive and decrease logistic costs is timely. About 500 companies have registered with the Free Trade Zone authority there. While keeping timelines and delivery of New Delhi's commitments will be key to the port becoming a regional hub for transit trade, steel and petrochemicals, it will be necessary to encourage Afghan companies to use the route more, in line with President Ashraf Ghani's desire to have a commercial fleet under the Afghan flag setting sail from Chabhar.

Visions of Chabhar's immense potential as a game-changer for prosperity and stability in the region must, however, necessarily be tempered by the reality of geo-political challenges. The Chabhar port has received a waiver from the U.S. sanctions on Iran for the moment, but these concessions could be withdrawn any time, given the constant upheaval in the administration. The possibility of the withdrawal of U.S. troops from Afghanistan, after the pullout from Syria, will add to security concerns for Afghanistan and impact on the Chabhar route as well. Meanwhile, the reconciliation process with the Afghan Taliban is likely to see the regional powers, the U.S. and Russia engaging Pakistan more. This could give Islamabad space to play spoiler in Chabhar, which is seen as a rival warm water port to Pakistan's Gwadar. That the Afghanistan government is hedging its bets on trade via Chabhar too is clear: in recent months, special cargo corridors have been opened with China, Kazakhstan, Turkey, Europe, Russia, the UAE, and Saudi Arabia, with more trade diverted through them than with traditional partners Pakistan and India. With Chabhar, India has done well to keep a place in the intricate connectivity network of the region. Given all the competing interests that criss-cross over Chabhar, it will require sustained and nuanced diplomacy to stay ahead in this game.

The worried Indian

Actor Naseeruddin Shah had every right to express what he did without fear of retaliation

The intimidatory power of the mob made itself felt once again when the Ajmer Literature Festival abruptly cancelled veteran actor Naseeruddin Shah's keynote address. This followed the torrent of abuse heaped on Mr. Shah by a loose coalition of persons, ranging from anonymous trolls on social media to functionaries of the Bharatiya Janata Party, after he spoke about the dangerous amount of power that mobs wield in India. In a reference to the violence over allegations of cow carcasses found in Uttar Pradesh's Bulandshahr district this month that led to the killing of a police officer and another person, he spoke of the growing insecurity over being targeted by vigilante groups. "There is complete impunity for those who take law into their own hands," said Mr. Shah. "I feel anxious thinking about my children." Unfortunately, in this climate of hyper-nationalism, even an expression of anxiety is twisted out of context and portrayed as disloyalty to the nation. As Mr. Shah has explained, he was only speaking as a worried Indian about a country he loves. But amid the acrimonious outburst against him, no one cares to listen. A fringe group in Uttar Pradesh has offered him a one-way ticket to Karachi. And State BJP chief Mahendranath Pandey suggested, outrageously, that Mr. Shah was growing into the character of the Pakistani agent he had played in a film.

That a mere expression of anxiety about lawlessness and vigilantism could be fraught with such repercussions is deplorable in a democracy. Three years ago, another actor, Aamir Khan, was hounded for expressing alarm about growing intolerance; pressure was even applied on a private company to dismiss him as its brand ambassador. With each such reaction, the message is sent out to the next celebrity to hush his or her intervention in the public sphere. Governments have often given in to the mob's dictates, either as the easy way out or for political signalling. In this case, the Rajasthan Chief Minister did the right thing by tweeting his regret over the fact that Mr. Shah couldn't participate in the Ajmer event, saying his "administration was fully prepared to hold [the] festival peacefully"; some arrests of those who attempted to vandalise the festival venue have also been carried out. But his own record of standing up for free expression, like that of many other politicians, is marred by inconsistency and underwritten by expediency. In his previous stint as CM, Mr. Gehlot and his party were of a piece with those who pressured Salman Rushdie into pulling out of the Jaipur Literature Festival in 2012. Ultimately, it is the responsibility of those in power to support those who feel threatened by their views and to come down hard on those who attempt to silence them with intimidation and threats.

Elections in an embattled democracy

Voters in Bangladesh face an imperfect choice: a heavy-handed incumbent versus a party that has stoked extremism



K. ANIS AHMED

Elections in Bangladesh are famously a blood sport. During the campaigns virtually every constituency turns into its own bull ring, as party cadres treat rival banners like a matador's red cape. With polls slated for December 30, the first two weeks of canvassing have already seen eight deaths and dozens injured. Given our historic standards, though, these numbers are still pretty low.

With a first-past-the-post system, Bangladesh's elections come down to a choice between coalitions led by the two major political parties: the secular-centrist Awami League and the quasi-Islamist Bangladesh Nationalist Party (BNP). The Awami League has governed since 2009, delivering economic growth and rolling back extremist militancy. The country hit 7.86% GDP growth in 2017-18. Under the Awami League government, the country's power output has quadrupled in the last decade, and Bangladesh has topped regional rankings on many social indicators such as gender parity in primary education and maternal mortality.

The BNP threat

Yet, the much beleaguered BNP still poses a threat to the Awami League. In addition to traditional anti-incumbency, a swathe of the public — especially sections of the intelligentsia and urban youth — has grown weary of the Awami



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League's heavy-handed rule, which was sorely on display during two rounds of student protests earlier this year. The Awami League also passed a needlessly harsh Digital Security Bill earlier this year. This has not gone down well with an increasingly digitised populace. Ironically enough, it is the ruling party's own massive programme of "Digital Bangladesh" that has led to the mass adoption of tech and Internet services.

Despite some just criticism of the Awami League's record on rights, critics who pretend that authoritarianism is a problem unique to the Awami League are being disingenuous. Not only did Bangladesh suffer military dictatorships in the 1970s and 1980s, the country has struggled to establish a culture of political tolerance even since the advent of democracy in 1991.

To understand why, a quick recap of pivotal moments of the past is unavoidable. The BNP won the first democratic polls in 1991, but refused to step down when their tenure ended in 1996. The Awami League led a mass movement to topple the BNP government and won the ensuing polls. In a con-

trast to the BNP, the Awami League voluntarily stepped down from power in 2001, and handed over the reins to an interim government as the Constitution required back then.

The BNP went on to win the 2001 polls, raising hopes of more trust-building measures. Instead, the BNP celebrated its victory in October 2001 with a pogrom on Hindu minorities that left hundreds killed, raped or injured across many districts. The BNP also pivoted sharply to the right and gave political patronage to extremist outfits which carried out a series of fatal attacks. One attack, in August 2004, targeted Awami League leader Sheikh Hasina, killing 19 people and injuring hundreds. Among the dead was Ivy Rahman, head of the women's wing of the Awami League. A separate attack the following year killed the Awami League's former Finance Minister Shah A.M.S. Kibria.

When the BNP's tenure came to an end in 2006, once again the party refused to hand over power to a credible caretaker government. The ensuing Awami League protests led to a stalemate that was broken finally with the installation

of a military-backed regime in January 2007. Dhaka's self-styled "civil society", dominated by Anglophone members of non-governmental organisations, and media, who enjoy disproportionate access to and credence with foreign diplomats and media, supported that non-democratic regime.

An unusual coalition

Today, it is a leader of that civil pack, Kamal Hossain, who has joined hands with the BNP — and by extension their ally Jamaat-e-Islami — to promise a restoration of democracy. Mr. Hossain is a renowned lawyer who was tasked by the nation's founder, Sheikh Mujibur Rahman, to author the country's secular constitution. He also served as a minister in Sheikh Mujib's cabinet in the early 1970s. But he split from the Awami League in the 1990s and formed his own minor political party, the Gono Forum, which has never won a parliamentary seat.

Mr. Hossain had promised that he would not form any alliance with the BNP if it didn't sever its relationship with the Jamaat. In reality, the BNP nominated 25 Jamaat leaders to contest polls on its ticket. As it happens, Mr. Hossain's own Gono Forum is also running on the BNP's symbol of "rice stalks". When journalists questioned Mr. Hossain about this awkward marriage, he yelled at them to be quiet, in Urdu ("khamosh").

It was perhaps always fanciful to think that any outsider could simply save the BNP, a party that has ceased to function like a mainstream participant in a democracy since 2001. Even in opposition, the BNP has resorted to grotesque forms of new violence. Ahead of

the last polls, in 2014, the BNP and Jamaat sponsored petrol-bombing of commuter buses that left more than 100 dead. That violent campaign was resumed in 2015.

Apologists for the BNP, including members of civil society, try to argue that all parties engage in violence. While violence has been sadly endemic to Bangladeshi politics, it has been confined mainly to clashes between party cadres and police. Ordinary citizens were never the target, until the petrol-bombing campaigns of 2013 and 2015.

Awami League's record

The Awami League has resorted to hardline tactics, no doubt. But in what democracy are incumbents facing a rival who had tried to literally bomb them out of existence? If anything, the Awami League may be at fault for not holding the BNP and Jamaat organisationally accountable for all the violence explicitly targeting civilians. It is not at all clear why groups that engage in violence akin to insurgent or terrorist groups should enjoy the respect or rights of a mainstream political party.

Voters in Bangladesh face an imperfect choice today. It may feel unpalatable to many of them to vote for an incumbent which has been excessively heavy-handed at times, while delivering much economic and social progress. But if the alternative is a party with a record of stoking extremism and targeting civilians for violence, then one must ask if it is at all wise to seek change for the sake of mere change.

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On a shaky foundation

Section 69 of the IT Act allows for disproportionate state action, and is antithetical to the right to privacy



SIDDHARTH SONKAR & SAYAN BHATTACHARYA

The Union Home Secretary, last week, promulgated an order authorising 10 Central agencies to monitor, intercept and decrypt information which is transmitted, generated, stored in or received by any computer. Under the order, an individual who fails to assist these government agencies with technical assistance or extend all facilities can face up to seven years of imprisonment or be liable to be fined.

The notification was reportedly issued in pursuance of powers stipulated in Section 69 of the Information Technology Act, 2000, which enables government agencies to intercept personal information of citizens under certain conditions. The Ministry, in response to flak from the Opposition, has issued a clarification that the authorisation is in conformity with the process stipulated in the IT Rules, 2009.

What is missed out

The clarification assumes the legitimacy of Section 69 of the IT Act, the basis on which the IT Rules were framed. The IT Rules in turn

form the source of power behind the Ministry of Home Affairs (MHA) notification. On the basis of this assumption, the clarification justifies the notification without examining the validity of its source. All that the MHA clarifies is that since the notification conforms with the IT Rules, there is no reason for eyebrows to be raised. This, argument, however, is fallacious since it fails to take a step back and peruse Section 69 of the IT Act, which after *K.S. Puttaswamy v. Union of India* — 'the right to privacy case', in 2017 — seems to fail the litmus test of constitutionality. Let us explain how.

Why is Section 69 unconstitutional after *K.S. Puttaswamy*? The nine-judge bench in *K.S. Puttaswamy* declared that there is a fundamental right to privacy flowing from *inter alia* Articles 19 and 21 of the Constitution. In order for a restriction such as Section 69 allowing for interception of personal data on a computer to be constitutionally valid, it would not only have to pursue a legitimate state aim (say, for instance, national security) but also be proportionate, so that there is a rational nexus between the means adopted (i.e., authorisation of interception) and the aim.

Section 69 of the IT Act is so broadly worded that it could enable mass surveillance to achieve relatively far less serious aims such as preventing the incitement of the commission of a cognisable of-



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ference. Such surveillance could be justified to achieve relatively far less serious objectives such as a Facebook post expressing dissent against government policy which, in the state's opinion, is offensive. The state, through the powers under Section 69, can therefore justify authorising surveillance, purporting this to be a grave concern. The language of Section 69, therefore, speaks abundantly of doublespeak, allowing for disproportionate state action, antithetical to the right to privacy.

Implications for free speech

Under Section 69, the government can intercept personal information under any of the following conditions: when it is necessary in the interest of Indian sovereignty or integrity; security of the state; friendly relations with foreign states; public order; and for preventing incitement to the commission of any cognisable offence related to these. While the first four feature in Article 19(2) of the Constitution, the last, namely preventing incitement to commission of

cognisable offences, is not an enumerated restriction. A restriction in the form of authorised surveillance would not be justified unless it is in order to maintain public order, a reasonable restriction under Article 19(2).

The Supreme Court has repeatedly accepted a hierarchisation between "public order" and law and order; it explains this through concentric circles where law and order represents the larger circle within which the next circle, public order, lies, which in turn contains the smallest circle representing the security of the state — the most grave concern. While public order is characterised by public peace and tranquillity, law and order requires preventing the incitement of an offence.

However, Section 69, as mentioned earlier, allows mass surveillance even when only law and order is affected while public order prevails: merely for precluding the incitement of the commission of an offence.

Such a broadly worded provision can have potential ramifications on free speech. This is because a constant sense of being watched can create a chilling effect on online communication, crippling dissent. As far back as 1962, Justice K. Subba Rao had explained in his powerful dissent how a "shroud of surveillance" maims individual freedom by engendering inhibitions that an individual cannot act as freely as he

would want to. Surveillance does not show direct discernible harms as such but rather imposes an oppressive psychological conformism that threatens the very existence of individual freedom. The Supreme Court reiterated this view in *K.S. Puttaswamy*.

Section 69, therefore, cannot be regarded as a reasonable restriction on free speech as well. Therefore, a simple law and order requirement is an impermissible restriction to free speech unless public order, a much higher threshold, is threatened.

Another inconsistency

Section 69 also falls short of meeting with the principles of natural justice by failing to accommodate pre-decisional hearings. The Section only makes post-decisional hearings before a review committee possible as a part of its procedure, compelling people to give up their personal information without being given an opportunity to be heard.

To conclude, the MHA notification rests on shaky foundations. While the Supreme Court missed the opportunity to examine the constitutionality of Section 69 of the IT Act, looking at the IT Rules to legitimise the notification seems to put the cart before the horse.

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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.

KCR's gameplan

The initiative taken by Telangana Chief Minister K. Chandrashekar Rao in forming a federal front needs to be looked at in perspective (Page 1, "KCR meets Mamata, pushes 'federal front'", December 25). His move to meet West Bengal Chief Minister Mamata Banerjee to discuss such an idea would be of advantage to the ruling Bharatiya Janata Party, which only wants a divided Opposition. The results in the recent Assembly elections point to resentment among the public and a shift toward anti-BJP formations. Unless the Opposition stays united and puts up a united front, it would be a tough task to try to dislodge the BJP.

Another major issue as far as the Opposition is concerned is in identifying a common prime ministerial candidate as there are too many

aspirants in the Opposition's ranks. One could sense this after DMK president M.K. Stalin's support for Congress president Rahul Gandhi as a strong possibility.

V. GANAPATHY SUBRAMANIAN, Nagercoil, Tamil Nadu

The proposed architects of the front seem to be confused about the shape, structure and contours of the edifice they are proposing to construct. It is true that India's future is dependent on strengthening its federal polity and that dominant regional parties have a crucial role to play. However, what we don't need is a third front by another name. People disheartened by right-wing politics or dynastic sycophancy may want to see a truly democratic alternative centred around a strong leader, but they certainly will not fall for any temporary arrangement made to fulfil

the political aspirations of regional satraps.

JAGAN R., Thiruvananthapuram

If Mr. Rao's real intention is only to defeat the BJP in the coming general election, he should not have initiated another 'federal front' but, instead, strengthened the hands of other Opposition leaders including those in the Congress who are trying to form a formidable front in order to defeat the communal-minded BJP. Mr. Rao's move makes one suspect that it is being mooted by him only to help the BJP divide the Opposition's votes. Ms. Banerjee and Odisha Chief Minister Naveen Patnaik should distance themselves from such a 'front' (Inside pages, "Regional claims garble narrative of Opposition unity", December 25).

THARCIUS S. FERNANDO, Chennai

Statue in Ghana

The article, "When Gandhi's statue is removed in Ghana" (Editorial page, December 24), tries to spin a grand historical narrative around an incident as a symbolic expression of Africa's anger against the purported mercantilist orientation of the Indian government. The extrapolation of an isolated incident to weave a story about Indian insensitivity to Africa's postcolonial struggles makes the write-up appear more as a biased political commentary about contemporary Indian politics than a balanced analysis of Africa's understanding of Gandhian thought. There is no reason why a national icon should command reverence in foreign countries especially in Africa where his perceived lack of empathy for the African struggle against apartheid has become a sore point with certain sections of the society. The lesson that the

Indian government can learn from the unfortunate episode is to avoid gifting Gandhi's statues to African nations.

V.N. MUKUNDARAJAN, Thiruvananthapuram

Files cleared

The Tamil Nadu government's move to clear business projects worth ₹16,000 crore will go a long way in creating more job opportunities in the State (Tamil Nadu, December 25).

CORRECTIONS & CLARIFICATIONS:

In the graphic "Laborious task" accompanying the report headlined "No rise in working women despite high literacy levels" (Dec. 24, 2018), the table representing the percentage of women out of the labour force in various education levels in the age group of 30 and above has an error. Actually, 65.2% (and not 62.7%) of the women were out of the labour force in 2015-16 compared to 62.7% in 2013-14. However, the data in the text of the report is correct.

With reference to the Business Review page article titled "GST is gathering steam but glitches remain for SMEs" (Dec. 24, 2018), the Business Desk clarifies that the facts mentioned in the article with respect to the extension of due date for GST Returns were relevant at the time when the article was written. The notification of the Government in extending the deadline was a subsequent development.

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