



Overdue correction

A relook at the overly harsh provisions of the Companies Act must yield action

The Centre has announced the constitution of a committee to revisit several provisions of the Companies Act, 2013 that impose stiff penalties and, in some cases, prison terms as well, for directors and key management personnel. The 2013 law entailed the first massive overhaul of India’s legal regime to govern businesses that had been in place since 1956 and was borne of a long-drawn consultative process. Now, this 10-member committee appointed by the Corporate Affairs Ministry has been tasked with checking if certain offences can be ‘de-criminalised’. The panel, which includes top banker Uday Kotak, has been given 30 days to work out whether some of the violations that can attract imprisonment (such as a clerical failure by directors to make adequate disclosures about their interests) may instead be punished with monetary fines. It will also examine if offences punishable with a fine or imprisonment may be re-categorised as ‘acts’ that attract civil liabilities. Importantly, the committee has also been asked to suggest the broad contours for an adjudicatory mechanism that allows penalties to be levied for minor violations, perhaps in an automated manner, with minimal discretion available to officials. In fact, some of the provisions in the law are so tough that even a spelling mistake or typographical error could be construed as a fraud and lead to harsh strictures.

The government hopes such changes in the regulatory regime would allow trial courts to devote greater attention to serious offences rather than get overloaded with cases as zealous officials blindly pursue prosecutions for even minor violations. The decision to build in harsh penalties and prison terms for corporate misdemeanours in the 2013 law was, no doubt, influenced by the high-pitched anti-corruption discourse that prevailed in the country at that moment in time. Apart from several cases of crony capitalism that had come to light during the second UPA government, massive corporate frauds reported at once-revered firms such as the erstwhile Satyam Computer Services had spooked investors and other stakeholders about the credibility of corporate India’s books and governance standards. When the NDA came to power in May 2014, a comprehensive review of the Companies Act was at the top of industry’s wish list as a means to revive the economy. Industry captains had red-flagged the impact of such provisions on the ease of doing business, and investor sentiment in general. A trust deficit between industry and government owing to stray incidents of corporate malfeasance should not inhibit normal business operations, they had argued. Four years down the line, the government is finally moving purposefully on this, a rethink perhaps triggered by the fact that private sector investment is yet to pick up steam and capital still seeks foreign shores to avoid regulatory risks. One hopes this is followed up on swiftly, before the ruling party slips into election mode.

Football fever

It may not have been the best World Cup, but it was not short on surprises and excitement

Russia 2018 may not, as FIFA president Gianni Infantino delicately put it, have been “the best World Cup ever”, but there is no denying that it was among the most entertaining. The final was a snapshot of the tournament as a whole: a thrilling spectacle featuring surprises, errors, and loads of goals. There was no single outstanding team but France, which secured its second World Cup, was the best of the lot over the five weeks. The French – coached by Didier Deschamps, who won the trophy as a player in 1998 and now emulates Mário Zagallo and Franz Beckenbauer – did not exactly play beautiful football. Often, they appeared workmanlike and conservative despite the frightening depth of talent. But they were efficient, organised, and clinical when it mattered, downing a doughty, unlucky Croatia at the final hurdle. For all the criticism of his methods, the plain fact is that Deschamps achieved the ultimate objective. Kylian Mbappe, who at 19 became the youngest to score in the World Cup final since Pele, showed glimpses of his extraordinary potential; he now looks set for greater things. France’s victory also shone a spotlight on the nation’s diversity, with players of African descent making up over half the squad. “There are different origins but we are all united,” Antoine Griezmann said after the final. “That is the France we love.”

This was a World Cup of shocks: Germany crashed out in the opening phase for the first time since 1938, Spain and Argentina faltered in the round-of-16, and Brazil in the quarterfinals. Teams built around superstars struggled, with Lionel Messi and Cristiano Ronaldo exiting before the last eight, while the likes of Croatia and Uruguay, which relied on collective spirit, advanced farther than expected. For Croatia, marshalled by the excellent Luka Modric, there is no disgrace in defeat. The nation’s relationship with its football team – and Modric in particular – is a complicated one, and has its roots in a corruption scandal involving a powerful former administrator. But on the pitch, the East European side showed great resilience. Russia 2018 will also be remembered for the home team’s spirited run to the quarterfinals, with the whole nation caught up in the euphoria. Russia put on a great show as host, its people warm and welcoming as fears of racist behaviour proved unfounded. The baton has now been handed over to Qatar, which in 2022 will host a winter World Cup for the first time. FIFA has approved the expansion of the World Cup to 48 teams in 2026, a decision that has divided opinion. As he celebrates the success of Russia 2018, Infantino has much to think about.

A redemptive moment

It matters little what the final ruling will be in the Section 377 case. There will be no return to the original scoreboard



PULAPRE BALAKRISHNAN

A conservative British historian nailed down the role of culture in creating the law when he said, “The trouble with marijuana is that it’s the black man’s vice.” He was referring to the role of racial prejudice in the evolution of the law in the erstwhile British colonies, among which India was the most prominent. Nothing else can explain the perception that consumption of marijuana is louché. In India, cultivation, possession, sale, transportation of ganja (cannabis) is prohibited without a licence even as serving *bhang* on auspicious occasions is a time-honoured tradition in parts of the country.

It is a similar internalisation of colonial prejudice that leads India’s middle class to flaunt a taste for whisky while distancing itself from “country” liquor. While all these demonstrate slavishness to non-Indian cultural values, it is yet less monstrous than the effect of some other codes imported into India during the colonial era.

Among these an important, but not necessarily the most prominent, one is Section 377 of the Indian Penal Code (IPC) which criminalises sexual intercourse considered “against the order of nature”. In effect this criminalises all intercourse other than the procreative. The colonial administrator had an eagle eye, as he had even identified animals as potential partners of man in this unholy act. For over 150 years an Indian

minority whose numbers we are unable to divine with accuracy has been yoked to a law without a narrative. Unless you are of a religious bent you are unlikely to restrict the idea of sex to procreation. Moreover, can consensual sex among citizens ever be considered the legitimate business of the state, which is what Section 377 implies?

Post-colonial India, though a democracy with some considerable achievements, has failed miserably to interrogate the laws under which it is governed; laws made to serve the colonial project of Britain. But now, with an urgency that has surprised the country’s LGBT community, of which I am a member, the Supreme Court of India has turned the tables by entertaining a curative petition in the matter of its own ruling in 2013 that Section 377 is not violative of India’s Constitution.

An empowerment

The court has given an opportunity to LGBT activists to make their case, for the religious groups that oppose the decriminalisation of consensual same-sex acts to state their position and asked the Government of India what it has to say about retaining Section 377. In one fell swoop the Court has empowered a group marginalised beyond imagination, one not just excluded from social life but actually criminalised on the basis of mere prejudice. It matters little what the final ruling will be in the case for one thing is certain. There will be no return to the original scoreboard so far as sexual rights is concerned. The idea of sexual equality has now been sown and will only gain currency.

Even as the hearings in the Supreme Court have been covered extensively in the media, it has wil-



lily drawn attention to two related aspects – namely the role of the political class and the question of the democratic content of the Indian LGBT movement itself.

Scant political concern

The political class manages a democracy. In the Westminster model that we follow, this opportunity goes to the political party that gains power every five years. It is astounding that India’s political parties have had next to nothing to say on the repeal of Section 377 while the hearings are on. Even the Indian Psychiatric Society has rushed through a position paper stating that homosexuality is not a mental disorder. Though this has come a full 45 years after a similar ruling by its American counterpart, it at least reflects a concern with being seen as credible.

No such concern appears to afflict our political parties. Clearly the Bharatiya Janata Party’s cultural nationalism does not extend to erasing a colonial stain on Indian life. The repression that grips its psyche is reflected in the deposition reportedly made in court by the Government of India that not even “unnatural sex” in private

Dark clouds over the RTI

Any move to amend the RTI Act must involve public consultation



NIKHIL DEY & ARUNA ROY

The Bharatiya Janata Party (BJP)government has struck another blow against transparency and accountability. Its already negative track record – that has been marked by an unwillingness to operationalise the Lok Pal, the Whistleblowers Act and the Grievance Redress law – has taken another step backwards if one is to go by a single line in item 14 in the legislative agenda of the monsoon session of Parliament (from July 18). It says: “To amend The Right to Information (RTI) Act 2005 – for Introduction, Consideration, and Passing.” The government will most likely proclaim these proposed amendments to be “progressive” as it did with its inverted definition of bringing about “transparency” in political party funding through “secret” electoral bonds. For such a dispensation, the RTI is an obvious threat.

Since 2005, the RTI Act has helped transform the relationship between the citizen and government, dismantle illegitimate concentrations of power, legitimise the demand for answers, and as-

sist people in changing centuries of feudal and colonial relationships. But public servants, troubled by accountability, have seen this as interference. As a result, the RTI Act has been under constant threat of amendments. At least two major attempts to amend the Act have been met with such strong popular resistance that the government of the day has had to back off. This time, it seems as if the government has decided to avoid all norms of transparency and consultation in trying to impose its undemocratic will.

It is a bitter irony that a little over a decade after the RTI Act was operationalised, proposed amendments have been kept secret; there has not even been a hint of public consultation.

Undermining consultation

It is no secret that the intent of this government is questionable. Applications for information about amendments made under the RTI Act have been stonewalled and information denied. Any amendment to the law should have been discussed before it went to the cabinet, as in the “pre legislative consultation policy” of the government of India (<https://bit.ly/2NVl4Gi>).

But more danger lies ahead. Bureaucratic jargon such as “consideration” is a euphemism for pushing the amendment through



without due consideration of parliamentary processes. For some time now, major pieces of legislation, including those that affect the transparency regime, are being pushed through without being sent to multi-party standing committees. Worse still, in order to avoid facing the strength of the Opposition, there have been steps to steamroller legislative measures (in the garb of money Bills) that have destabilised access to information such as Aadhaar and electoral bonds.

Blow to transparency

The spirit of the RTI law lies in not just the filing of an RTI application and getting an answer. It actually mandates the replacement of a prevailing culture of secrecy with a culture of transparency. Under Section 4(2) of the RTI Act, which has been poorly implemented, it says: “It shall be a constant endeavour of every public authority... to provide as much information *suo motu* to the public at regular inter-

need be treated as an offence. This mealy-mouthedness is of a piece with the tweet by a leading member of the party some years ago that gay men – he had chosen the colonial “homos” – are “genetically handicapped”. He later refined his position to tweet that “if they flaunt it, it has to be punished & therefore there has to be Section 377 of the IPC”. Now who has decided that flaunting your sexuality is any more vulgar than flaunting your foreign economics degree?

As for the Congress party, whose leadership considers it to be India’s answer to social democracy, its silence leaves it open to the charge of cowardice. In a party that otherwise makes a show of its concern for the minorities, its own foreign-educated strategists appear to have missed the observation by John Rechy, a pioneer of the American gay movement, that gay men are “the only minority against whose existence there are laws”.

For the Congress party it seems the only minorities are the religious ones. In an unusual gesture, soon after the reading down of Section 377 by the Delhi High Court in 2009, the Law Minister was featured on television assuring men in cassocks that “it is wonly a reading” (sic), implying that the Congress Party ‘would keep in mind the sentiments of religious minorities’. Why is it necessary to appease Christian lobbies in India on the matter after Pope Francis has said “Whom am I to judge?” when asked about same-sex relationships? The president of the Congress party recently met Muslim ‘intellectuals’ presumably to listen to their concerns. This is only appropriate in a democracy. However, at the same time and at the very least he could have used Twit-

ter, a medium that he appears to enjoy using, to express his support to LGBT Indians as they face a trial of monumental significance not just to them but for Indian democracy itself.

More generally, it reflects the quite extraordinary evolution of democracy in India that groups claiming to represent the religious minorities, while scouring the political space for every privilege, try to deny the most basic rights to a secular minority, the LGBT. As an Indian committed to a secular state, I can only repeat “this was not what I had meant at all”.

Questions for the community

Finally though, the ball returns to the court of the LGBT community itself. As we contemplate a future after the closing of the trial, whatever may be the verdict, the question is how the community will govern itself and what role it will play in spreading the freedom it has received from the mere playing out of its case in the highest court in the land these few days past. Will India’s LGBT members create an inclusive world, embracing people of all ages and every appearance? Will they be true to its colours and be part of a rainbow coalition to make India a democracy that includes others on the margins, namely women, the manual scavengers and the physically challenged? Only time will tell. For the moment though, abandoned by the political parties and their intellectual servitors, they may be allowed to savour this redemptive moment for Indian democracy by remembering the hymn ‘Amazing Grace’: “My chains are gone, I’ve been set free”.

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vals... so that the public have minimum resort to the use of this Act to obtain information.” One can understand why there is an attempt to undermine the RTI Act in letter and spirit.

Hampering accountability

The popular movement for accountability which swept across the country five years ago has also been successfully neutralised – at least for now. While the RTI Act allowed us to uncover fraud, it was difficult to ensure that the information could be used to hold a bureaucrat or elected representative accountable. The Lokpal debate, for example, highlighted grand corruption, but those who protested across India were personally fed up with the inefficiency of public servants and their impunity. Accountability to the people should have been institutionalised through a strong social accountability and Grievance Redress Act, as promised by the BJP. That promise has been forgotten. The Lokpal Act is now in cold storage. No Lokpal appointments have been made, despite repeated prodding by the Supreme Court; in fact the government has tried to protect bureaucrats by amending the Lokpal Act in such a way that assets of family members of public servants do not have to be disclosed in the public domain.

Citizens’ movements in India

have been energetic and courageous. The use of the RTI has led to more than 70 citizens fighting corruption losing their lives, but the government remains unaffected. People have been demanding a strong whistle-blower protection law, but like the Lokpal, the Whistle Blowers Protection Act has been ignored, with attempts to amend the law that will completely negate its intent.

It is notable that amendments to the RTI rules that were put up for public feedback have reportedly been withdrawn after objections. It is without justification that a government which could place its rules for public consultation should now shy away from placing amendments in the public domain. Though there have been reports that the proposed amendments seek to change the status of the information commissions, it is not worth discussing these in an opaque framework.

Secret amendments to a law fashioned and used extensively are deeply suspect. This time round, it is far more critical that all of us rally together again for the people of India cannot afford to lose what has been gained through the RTI.

Nikhil Dey and Aruna Roy are founder members of the Mazdoor Kisan Shakti Sangathan and National Campaign for People’s Right to Information

LETTERS TO THE EDITOR

Letters emailed to [letters@thehindu.co.in](mailto:letters@thehindu.co.in) must carry the full postal address and the full name or the name with initials.

A vision for education

Educationists in general have no objections to the ‘Institute of Eminence’ (IOE) policy. But, as the writer (“A helping hand for Indian universities”, Editorial page, July 16) has pointed out, criticism is related to the “procedure and process of selecting the IOCs”. How does the government aim to create institutes of excellence with global ranking in the higher education sector without addressing two very important requirements – a fund crunch and academic autonomy? Finance is no doubt the life blood for the execution of any reform. Without paying attention to an assessment of the exact financial needs of universities (to upgrade their quality and raise resources), the IOE policy will remain only rhetoric. It is a pity that even the New Education Policy proposals do not seem to address

these critical requirements.

NAMEEZA A. RASHEED, Chennai

Jayalalithaa interview

It is very easy to “spill the beans” when someone is no longer alive. Very few would believe that former Tamil Nadu Chief Minister J. Jayalalithaa was willing to grant the writer, Karan Thapar, another interview (OpEd page, “Surprised by Jayalalithaa”, July 16). So it is his word against the truth. One has also never seen the writer being aggressive in his other interviews with various political leaders. The success of a host lies in putting forth questions in a way which would elicit good answers.

SARANGAN RAMASWAMY, Bengaluru

■ The writer’s anecdotes were interesting. Though all his questions put forth to Jayalalithaa were sure to invoke her anger, the way in

which she answered them, in her usual authoritative manner, was impressive. Her political experience was evident.

Mr. Thapar did try to corner her with embarrassing questions right through the interview, but to no avail. In the end, it must be appreciated that she stayed till the end and answered his questions.

D. SETHURAMAN, Chennai

■ The writer appears to have deliberately provoked Jayalalithaa to cut short the interview and seems to cherish it as a great victory. On the other hand, it can be counted as his failure. It was also heartening that Jayalalithaa did reach out to him when she saw him at a meeting. The unwritten sentence in the article should be this: how the writer was put in his place by a mass leader.

K. RAMACHANDRAN, Chennai

■ The article-extract is an attempt, in vain, to save lost face. All who have seen the interview in full will know who emerged triumphant. Jayalalithaa was one leader who always faced the media well prepared. Her answers were right to the last decimal.

In fact her interview with Simi Garewal will always remain one of her best TV appearances as Ms. Garewal even got the leader to sing. On the other hand, Mr. Thapar was unable to make any headway with Jayalalithaa. Is this all an attempt to make his book sell?

T.V. SREEKUMAR, Lawspet, Puducherry

Wimbledon 2018

Grit, confidence and clean tennis were what earned Novak Djokovic his 13th Grand Slam, at Wimbledon. When big serves have become the order of victory, the charm of rallies and volleys have become rare in

the Championship. Though tennis fans were denied a chance of witnessing a rare Rafael Nadal and Roger Federer final, it’s well done Djokovic. Serena Williams fought well.

S. VISWANATHAN, Tiruchi

Victory, at Moscow

Across five weeks, the FIFA World Cup, 2018, was a peculiar world cup fixture. The final was without any great player – no Messi, Ronaldo or Neymar. In fact, this world cup belonged to the minnows. All credit for the success of the FIFA World Cup 2018 should go to

CORRECTIONS & CLARIFICATIONS:

The front-page football story, “Les Bleus beat Croatia, rule the world” (early editions, July 16, 2018), erroneously said the second goal was scored with the aid of the Argentine referee, and became the first video-assistant-reviewed goal in *World Cup* history. It should have been: *World Cup final history*. The error was corrected in the city editions.

It is the policy of The Hindu to correct significant errors as soon as possible. Please specify the edition (place of publication), date and page. The Readers’ Editor’s office can be contacted by Telephone: +91-44-28418297/28576300 (11 a.m. to 5 p.m., Monday to Friday); Fax: +91-44-28552963; E-mail: [readerseditor@thehindu.co.in](mailto:readerseditor@thehindu.co.in); Mail: Readers’ Editor, The Hindu, Kasturi Buildings, 859 & 860 Anna Salai, Chennai 600 002, India. All communication must carry the full postal address and telephone number. No personal visits. The Terms of Reference for the Readers’ Editor are on [www.thehindu.com](http://www.thehindu.com)