



Welcome shift

The transfer of the Muzaffarpur shelter home trial to Delhi is a major step towards justice

The Supreme Court's order transferring the trial in the Muzaffarpur shelter home case from Bihar to a court in Delhi is a welcome intervention to ensure justice for the children who were sexually exploited. The Central Bureau of Investigation had argued that the trial would not be fair if it was held in Muzaffarpur. In shifting it to a court notified under the Protection of Children from Sexual Offences Act at Saket in Delhi, the apex court has once again demonstrated its lack of confidence in the Bihar government. It had transferred the investigation from the State police to the CBI. Later, it asked the agency to take over the probe in respect of 16 other shelter homes for children, destitute women and senior citizens. These interventions had become necessary, given the apparent apathy of the authorities in Bihar even after horrific instances of physical and sexual exploitation came to light last year. The Bihar government asked the Tata Institute of Social Sciences to audit the short-stay and shelter homes, run by non-governmental organisations but funded by the government. Last year, TISS came up with a damning report on the unsafe conditions in which children were staying in many shelter homes. The Muzaffarpur home was among the worst: many girls reported physical and sexual violence. More than 30 girls below 17 have been sexually assaulted.

However, the subsequent response of the State government has not inspired much confidence. Apart from some officials being suspended, and some of those involved arrested, the State government did not have much to show as stringent action. Its response came under adverse scrutiny. A Bench of the Supreme Court found that 11 FIRs mentioned only minor offences, that is, "the least serious" of the offences involved. In the Muzaffarpur case, the court took note of the clout of Brajesh Thakur, whose NGO ran the shelter home concerned. The girls in the shelter identified Chandrasekhar Verma, the husband of former Social Welfare Minister Manju Verma, as a frequent visitor. The Verma couple later surrendered to the authorities. It is disquieting and significant that the court had to order Thakur's transfer to a prison in Patiala to prevent him from exerting his influence on the authorities in Bihar. The court is also separately monitoring the functioning of child care homes in Bihar. Meanwhile, it is high time that States bestowed sufficient attention to such institutions. A recent Central government committee report highlighted the shocking inadequacies in the facilities available at most child care institutions and homes. There is a strong case for a systematic scrutiny to be taken up on an urgent basis to address the problem.

A curious bid

The Thai general election will determine the military's power in the new set-up

The rather unusual move by a member of Thailand's royal family to announce a bid for the office of Prime Minister has ignited greater interest in the country's general election. Ubolratana Rajakanya, King Maha Vajiralongkorn's sister, subsequently had her nomination withdrawn – but the fact that the prospect drew a public disapproval from the King is an indication of how closely the palace is tracking the contest. The larger question concerning the March 24 poll is the prospect of Thailand's credible return to civilian rule, after the 2014 military coup that deposed the government of Yingluck Shinawatra. The military general-turned-Prime Minister, Prayuth Chan-ocha, is contesting as the candidate of the Palang Pracharat party, known for its pro-military and pro-palace leanings. The constitution drafted by his ruling National Council for Peace and Order, and ratified in a 2016 popular referendum, introduced a voting system that provides for a wholly nominated Upper House of Parliament and allotment of seats to army officers. King Vajiralongkorn had granted approval for its promulgation only after withholding some other controversial provisions. The March general election has been long overdue, as General Prayuth repeatedly deferred the dates since seizing power in 2014. Moreover, investigations into social media content from the new Future Forward party have added to worries about the junta silencing Opposition voices. While the bid to hand over power to an elected government may seem well-intended, the power given to the military in the legislature remains a concern.

Ms. Ubolratana had entered the fray with the Thai Raksa Chart party, which is linked to exiled former Prime Ministers, the telecommunications tycoon Thaksin Shinawatra and his sister Yingluck. The Shinawatras are perceived to be a challenge to the Bangkok elite, including the palace and the military. But despite being evicted from power in coups, they still hold sway among the predominantly rural electorate. Till now, the military had struggled to dent their chances sufficiently, and Mr. Shinawatra or his proxies won every election since the early 2000s. The new constitution ensures that the military will be a crucial determinant in a democratic transition. King Vajiralongkorn's public response to his sister's decision to contest the election may also affect the chances of Mr. Shinawatra's party. Ms. Ubolratana had relinquished her royal title in the 1970s, but her candidature sparked speculation about an understanding between the palace and Mr. Shinawatra. The March election is being watched keenly across the region. The second largest economy in Southeast Asia, Thailand this year assumes the presidency of ASEAN, that sets a broad economic and political agenda for member-states. A number of them are so-called guided democracies, with a pre-eminent role for the military.

Everyone is afraid of data

There needs to be robust infrastructure for official statistics so that governments do not suppress inconvenient truths



SONALDE DESAI

Over the past two weeks, headlines have focussed on declining employment between 2011-12 and 2016-17; loss of jobs under the National Democratic Alliance government, particularly post-demonetisation; and the government's refusal to release a report using the Periodic Labour Force Survey (PLFS) documenting this decline, leading to resignations of two members of the National Statistical Commission. In a pre-election, politically charged environment, it makes for eye-catching headlines.

Five trends

Let us step back from this episode and recall similar controversies over official data in the past. Past experiences tell us five things.

First, suppression of results seems to be a problem common to all political parties. Census 2011 data on religious distribution of the population was not released until 2015. It is widely believed that these data were ready before the 2014 election, but the United Progressive Alliance government was worried about inciting passions around differential population growth between Hindus and Muslims and chose not to release the tables. Similarly, the UNICEF conducted the Rapid Survey on Children (RSOC) 2013-14 on behalf of the Ministry of Women and Child Development but the report was held up by the new government, allegedly due to the fear that it showed Gujarat in poor light. Sometimes these concerns lead to lack of investment in data collection itself, as is the case with the National Sample Survey, or the

NSS's Employment-Unemployment surveys (not conducted since 2011-12), forcing public policy to rely on non-comparable statistics from other sources such as the data from the Employees' Provident Fund Organisation (EPFO). These episodes are likely to recur, and hence, we need a more comprehensive strategy for dealing with them.

Second, the fear of having statistical reports misquoted is legitimate. We live in a world where appetite for news is incessant and the news cycle is very short. Statistics that don't always lend themselves to rapid unpacking into sound bites and headlines are easily misinterpreted. When Census 2001 results on religion were released, in September 2004, a newspaper led with a story that although the Hindu growth rate between 1981-1991 and 1991-2001 had declined from 25.1% to 20.3%, that for Muslims had gone up from 34.5% to 36%. Media reports paid little attention to the actual report that highlighted that the 1991 Census was not conducted in Jammu and Kashmir and that after adjusting for it, growth rates for both Hindus and Muslims had declined. When the mistake was discovered, it was blamed on the then Registrar General and Census Commissioner, J.K. Banthia, a highly competent demographer. He was sent into bureaucratic exile while the news media moved on to a new story.

Third, it is impossible to bottle up the genie once data are collected and reports prepared. In a world dominated by WikiLeaks, suppressing reports seem to create an even bigger problem, since it allows individuals with exclusive access to act as the interpreters for others. In the instance of the RSOC mentioned above, suppression of the report, coupled with leaked data encouraged speculation by *The Economist* (July 2015) that the data were being suppressed because Gujarat



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must have fared poorly on reducing malnutrition. It stated that Bihar had made much greater progress since the proportion of children who go hungry had been cut from 56% to 37% between 2005-6 and 2012-13, while the decline was much smaller in Gujarat, from 44.6% to 33.5%.

Fourth, sometimes leaked results create speculation that is far worse than full disclosure would warrant. The Economist cherry-picked its comparisons. Nutritional status is measured by weight-for-age (underweight) and height-for-age (stunting). The final report showed that about 41.6% of children in Gujarat were stunted (had low height for their age). This is higher than the nationwide average of 38.7%. However, improvement in stunting in Gujarat between 2005-6 and 2013-14 was of similar and slightly higher magnitude as that for the nation as a whole: 10.1 versus 9.7 percentage points. Moreover, stunting decline in Gujarat was greater than that in Bihar, 10.1 percentage points as opposed to 6 percentage points. Usually statistics on underweight and stunting should provide a similar picture; when they do not, greater care is required in interpretation. This was not possible because only *The Economist* seemed to have access to the report and led the headlines.

The employment picture

Fifth, statistics often deal with complicated reality and require thoughtful analysis instead of the

Time to raise the bar

The judiciary needs a mechanism to regulate post-retirement government appointments



N.L. RAJAH

Justice A.K. Sikri, a well-regarded judge of the Supreme Court of India, found himself in the eye of a storm arising from accepting a post offered by the government, last year, while being a judge of the court. By later turning down the offer after the controversy erupted, he substantially redeemed the judiciary's and his own honour. However, this is an issue that recurs frequently. Even titans in the legal field have had to face stinging rebuke from respected members of the fraternity for similar lapses.

The case of M.C. Chagla

For example, take the case of the late Justice M.C. Chagla. Both he and the former Attorney General of India, M.C. Setalvad, were members of the First Law Commission. Speaking as members of the Law Commission they had categorically denounced the proclivity of judges accepting post-retirement jobs sponsored by governments and called for an end to it. Unfortunately, in his post-retirement as-

signments, Justice Chagla violated the very same principle he had supported.

After retirement, he accepted a government appointment to serve as Indian Ambassador to the U.S. (1958-61) and later as Indian High Commissioner to the U.K (1962-1963). Soon after this he was asked to be minister for education in Nehru's cabinet, which he again accepted. He served as Education Minister (1963-66) and then as Minister for External Affairs (1966-67).

All this incensed his good friend M.C. Setalvad no end. In his book, *My Life: Law and Other Things*, he did not mince words in commenting on this serious lapse. He observed: "The Law Commission had, after careful consideration, expressed the unanimous view that the practice of a judge looking forward to accepting employment under the government after retirement was undesirable as it could affect the independence of the judiciary... He was so keen to get into politics that soon after the report was signed by him he resigned his office to become India's Ambassador to the United States. His action was characteristic of the self-seeking attitude of many of our leading men."

These harsh words are possibly unfair to a person of the calibre of Chagla. In none of the posts he



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held could he be accused of having acted as a sidekick to the government. On the other hand, by declaring in 1965 that the Aligarh Muslim University could not claim minority status conferred under Article 30(1) of the Constitution, he even earned the collective ire of his cabinet members. However, the shrill denunciations of the Law Commission on judges accepting post-retirement posts and Setalvad's repeated calls to honour the principle merit acceptance even today.

In a study, the Vidhi Centre for Legal Policy pointed out that as many as 70 out of 100 Supreme Court retired judges have taken up assignments in the National Human Rights Commission of India, National Consumer Disputes Redressal Commission, Armed Forces Tribunal, and the Law Commission of India, etc. In *Rojer Mathew*

bare bones report contained in typical government reports. The headline in *Business Standard* on February 3 based on the leaked PLFS report claims that more than half the population is out of labour force; however, the statistics they present show that the trend is dominated by women and the rural population. If the full report were available, I think it would be rural women who would drive the employment story. This is very much a continuation of the trend between 2004-5 and 2011-12 documented by the NSS, under a different government.

Between 2004-5 and 2011-12, work participation rates for rural women of working ages (25-64) fell from 57% to 43%. However, much of this decline was in women working on family farms and in family businesses, from 42% to 27%; decline in wage work was much smaller, from 24% to 21%. If lower engagement of women with family-based activities such as farming, rearing livestock or engaging in petty businesses drives the decline in employment, we may need to look at declining farm sizes and increasing mechanisation as the drivers of this decline. One can blame the government for not creating more salaried jobs for women pushed out of farming and related activities, but it would be hard to blame it for eliminating jobs.

If the full report and unit level data for the PLFS were available, it is possible that we will find a continuation of the trend that started in 2004-5. This is not to say that demonetisation may not have had a negative impact, particularly in urban India, where *Business Standard* reports that employment fell from 49.3% to 47.6%, but this is a much smaller decline. It is also important to note that the urban comparison between the NSS and the PLFS requires caution, particularly for unemployment figures. Whereas the NSS contains inde-

pendent cross-sectional samples for each sub-round, the PLFS includes a panel component in urban areas where the same households are re-interviewed every quarter. Since it would be easier to find unemployed individuals than employed individuals for interview, attrition adjustment is necessary before drawing any conclusions. Without access to the full report, it is difficult to tell whether attrition adjustment was undertaken.

So how do we get out of this vicious cycle where fear of misinterpretation leads to suppression of data, which in turn fuels speculation and suspicion and ultimately results in our inability to design and evaluate good policies? The only solution is to recognise that we need more openness about data coupled with deeper analysis, allowing us to draw informed and balanced conclusions. The onus for this squarely lies with the government. Simply placing basic reports in the public domain is not sufficient, particularly in a news cycle where many journalists are in a hurry to file their stories and cherry-pick results to create headlines.

Spread the net wider

Understaffed and underfunded statistical services cannot possibly have sufficient domain expertise to undertake substantively informed analyses in all the areas for which statistical data are required. A better way of building a robust data infrastructure may be to ensure that each major data collection activity is augmented by an analytical component led by domain experts, recruited from diverse sources, including academia.

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v. *South Indian Bank Ltd.* – which is currently going into the issue of tribalisation of the judiciary and its challenges to the independence of the judiciary – senior counsel Arvind P. Datar, amicus, has observed: "The Tribunals should not be haven for retired persons and appointment process should not result in decisions being influenced if the Government itself is a litigant and appointment authority at the same time." Mr. Datar has expressed the sentiments of many of us at the Bar.

Striking a balance

At the same time, it is also true that the valuable experience and insights that competent and honest judges acquire during their period of service cannot be wasted after retirement. Unlike abroad, a judge of the higher judiciary in India retires at a comparatively young age and is capable of many more years of productive work. However, government-sponsored post-retirement appointments will continue to raise a cloud of suspicion over the judgments the best judges delivered while in service. Though cliched, it is true that in law justice must not only be done but also be seen to be done. Therefore, the viable option is to expeditiously establish, through a properly enacted statute, a commission made up of a majori-

ty, if not exclusively, of retired judges to make appointments of competent retired judges to tribunals and judicial bodies.

It is true that judges cannot legislate. However, where a void is found in the legal framework that requires immediate attention, and legislative intervention is not likely to emerge immediately, the Supreme Court is empowered to provide an interim solution till legislation is passed to address the hiatus. This process the top court has followed, to cite an instance (there are others), in the Vishaka case, where it laid down guidelines to deal with sexual harassment in workplaces till a law was passed by Parliament. It is desirable the Supreme Court invokes that methodology now and puts in place a process to regulate post-retirement appointments for judges. Such a process must sufficiently insulate the judiciary from the charge of being a recipient of government largesse.

In these times, the attacks on the fabric of independence of the judiciary will not be through engulfing flames but through small corrosive doses. Therefore, it is in the judiciary's own interests to resolve this issue as expeditiously as it can.

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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.

Rafale, Part 3

The Hindu has once again lived up to its reputation of being the daily that is committed to social causes and public values in keeping with the highest norms of journalistic ethics (Page 1, 'Exclusive', "Government waived anti-corruption clauses in Rafale deal", February 11). The criticism by a section of readers – who are questioning the credibility of the daily in exposing irregularities in the Rafale deal – has been harsh and in bad taste. That said, it needs to be understood that the signatories to the inter-governmental agreement are the sovereign governments of France and India. The non-inclusion of the standard DPP clauses has to be viewed in this light. Although anti-corruption

clauses were waived, there is no clinching evidence of the involvement of middlemen or illegal gratification. The supposed irregularities appear to be procedural rather than financial.

B. SURESH KUMAR,
Coimbatore

■ There is a popular saying, "Three things cannot be hidden for long: the sun, the moon, and the truth." The new disclosures (February 11) make it crystal clear that there is some hidden agenda behind the government's negotiation of the Rafale deal. The government has to give credible answers to many unanswered questions.

BIDHI BARAL,
Cuttack, Odisha

■ I often used to wonder why the paper never pursued investigative journalism in

the recent past but have been pleasantly surprised with the 'Rafale revelation series'. The deal is dodgy: from escalating prices, anti-corruption clauses being waived, sovereign guarantee being bypassed, parallel negotiations taking place, Parliament and the Supreme Court being misled, a private firm being favoured over a public sector giant, to, finally, demands for a JPC being evaded. It's a pity that there are some who are either ignorant or keen on showing implicit partisanship to the ruling party and unable to make sensible arguments when there is damning evidence.

J.M. SALMAN JAVID,
Chennai

■ It may not be an exaggeration to say that *The Hindu* has been anti-BJP for quite some time now

while choosing to not even whisper about Congress governments that have been corruption-tainted and ruining India. The daily does not seem to have the magnanimity to appreciate the well-meaning programmes of the present government. In contrast, the Indian National Congress party has done precious little despite decades of rule. The fact is that the Rafale defence deal is certainly not Bofors. The paper is only playing into the hands of the Opposition, which is bent on maligning the otherwise unblemished and eventful tenure of the NDA.

R. SAMPATH,
Chennai

At 'The Huddle'

For many, the space for debate and dissent is shrinking, which demands that there be a fix especially

as we move towards a new India. The initiative to organise an event such as this is welcome especially as it has become essential to be able to air one's suggestions and sort out one's differences on various subjects and issues. It is interesting ideas that contribute to making our country more vibrant, and *The Hindu's* 'The Huddle' event should continue to be one such space for this.

PUSHPENDRA SINGH,
Sonapat, Haryana

■ I attended 'The Huddle' at Bengaluru (an event 'by

invitation') and found the sessions to be cerebral. But in line with the newspaper's stated position and in the shadow of the Rafale exposé, there was an anti-BJP thread in most sessions.

The session, "Reviving the Congress", was not even a debate but an occasion to be an election platform for a specific political party. It would have been less blatant had it been on "How to build a credible Opposition" to achieve a similar objective.

SUNIL KOLANGARA,
Bengaluru

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CORRECTIONS & CLARIFICATIONS: In the report about the release of the commemorative volume on Sri Raghavendra Swamy (Feb. 11, 2019), the last paragraph misidentified T. Ravi, S.D.T. Rao, and C.G. Vijaya Rama Raju as the officials of the Sri Raghavendra Swamy Math. They are respectively The Hindu's General Manager - Operations, Hyderabad; Deputy General Manager - Circulation, Vijayawada; and Assistant Manager - Circulation, Visakhapatnam.

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