



Unprecedented crisis

The accountability and independence of the judiciary must not be compromised

These are extraordinary times for the judiciary. From signs of a confrontation with the executive over judicial appointments to an unpleasant rift among Supreme Court judges, it has seen much turmoil recently. The process initiated by major Opposition parties to impeach the Chief Justice of India is an unprecedented crisis. The motion, details of which cannot be revealed under Rajya Sabha rules until it is admitted, draws its substance and arguments mainly from the points raised by the four senior-most judges, whose dissent brought simmering differences to the fore. Their main charge, that CJI Dipak Misra selectively assigns cases to Benches of his choice, had some dark ramifications, including insinuations about the way he dealt with a petition by a medical college on the judicial and administrative side, and a case of suspected judicial bribery. The CJI has stuck to his position that as ‘master of the roster’ he has the prerogative to allot cases. Are the senior judges who question this entirely wrong? While putting in place the collegium system for judicial appointments, the Supreme Court said “consultation with the Chief Justice” meant “consultation with a plurality of judges”. The argument that the power to allot cases should be exercised by the Chief Justice in consultation with senior judges may have some substance from this point of view. The counter-argument is that a principle evolved for appointments can’t be stretched to cover routine functions such as constituting Benches. But this still raises the question: could the CJI have better addressed his colleagues’ concerns and put in place an informal consultative system, so the damage the institution has suffered could have been avoided?

The movers of the motion do not have the numbers to get it passed. And it is wholly within the power of Vice-President and Rajya Sabha Chairman M. Venkaiah Naidu to decide whether to admit it. Against this backdrop, the impeachment attempt led by the Congress may be perceived in some quarters as no more than a political move to highlight its claim that key democratic institutions are in danger under the present regime. To the people at large, the real question is whether it is the internal rift or the executive’s attempt to keep it under its thumb that poses the greater danger to the judiciary. The Rajya Sabha Chairman will have to weigh one question before admitting the motion: what will cause greater damage to the institution, pursuing the process or rejecting it outright? Some may say any inquiry into the CJI’s conduct will imperil judicial independence, and others may argue that ignoring the allegations will be more dangerous. The Constitution advisedly envisages the impeachment of superior court judges as a rigorous political process driven by Parliament. It has in-built safeguards such as an inquiry by a panel of judges, and a two-thirds majority in both Houses. The intention is to provide for both accountability and independence of the judiciary. Neither of these objectives can be dispensed in favour of the other.

Common wealth?

CHOGM again failed to make a case for its relevance in the 21st century

The Commonwealth Heads of Government Meeting (CHOGM) held in London came with hopes of a “re-energised Commonwealth”. To begin with, the summit was being held in the U.K., the founder of the grouping of mostly former British colonies, after 32 years. Besides, Queen Elizabeth II, the head of CHOGM, attended the summit, which she has done infrequently in the last few years owing to her health. She opened her homes in Buckingham Palace and Windsor Castle for the event, in what was called a “charm offensive” by the hosts, who were looking to revive the 53-nation grouping as Commonwealth 2.0, amidst Britain’s rocky exit from the EU. In India too, the summit was seen to be a promising place to play a leadership role, and Prince Charles’s visit to Delhi to invite Prime Minister Narendra Modi bolstered that belief. Mr. Modi was the first Indian Prime Minister to attend CHOGM in a decade, after Manmohan Singh skipped the summits in Australia (2011) and Sri Lanka (2013) over bilateral differences, and Mr. Modi skipped the summit in Malta (2015) out of indifference. So it was widely expected that India would step up to a bigger role, and help chart a future course for the Commonwealth.

Given the expectations, the outcome of the meet was underwhelming. It was announced Prince Charles would ‘succeed’ his mother as the head of the Commonwealth, ignoring calls for the position to be more democratically shared or rotated. There were substantive statements on the Blue Charter on Ocean Governance and on the Commonwealth Connectivity Agenda for Trade and Investment, which could together counter China’s Belt and Road Initiative. But there was little by way of a road map to achieve the goals. Prime Minister Theresa May apologised for her Home Office’s threat to deport thousands of immigrants brought as manual labour in the 1940s on the ship *Empire Windrush* from the Caribbean, but failed to convince most members of the Commonwealth that Britain would reverse its policies on immigration. The U.K.’s hard line on Indian “illegals”, which prevented the signing of a bilateral agreement on immigrant “returns” between Mr. Modi and Ms. May, too indicates that post-Brexit London is likely to welcome trade in goods from the Commonwealth, not services. The Commonwealth remains a great platform for development aid, democratic values and educational opportunities, but its relevance is unlikely to increase unless it adopts a more egalitarian and inclusive attitude to its next generation of Commonwealth citizens, to partake in a prosperity their forefathers built.

Lost opportunities in London

Despite its vast potential, the Commonwealth Summit gave the impression of being out of step with the times



VIDYA RAM

We’re often told journalism is about telling detail. Here’s one from the Commonwealth Heads of Government Meeting (CHOGM) in London that ended on Friday. During the closing press conference of a summit pegged as one that would breathe fresh life, energy and relevance into the grouping, a journalist from Nigeria rose to ask a question particularly close to the hearts of the Commonwealth’s population: would it address free movement within the 2.4 billion people-strong group? It was put to Commonwealth Secretary-General Patricia Scotland, but was swiftly passed on to the four heads of government heads gathered there – including British Prime Minister Theresa May – all of who shrugged off the question.

Grey on migration

The lengthy communiqué from the leaders published at the end of the two-day summit – and off the back of forums on women, business, youth and civil society – was strikingly short on detail and vision when it came to the issue of migration. A brief paragraph touched on their recognition of “safe, regular and responsible migration”, and various protocols related to refugees.

The lack of official recognition of the issue came as the dark cloud of the British government’s immigration policy hung heavily over the summit, and in particular over its treatment of the so-called Windrush generation. These are men and women who, often as children, had come to Britain between the late 1940s and early 1970s with their families, as part of post-war efforts to address intense labour

shortages, but who, thanks to a toughening of Britain’s immigration regime, were treated as undocumented migrants. In some cases they have been denied life-saving National Health Service treatment and even deported. Shockingly in the run-up to the summit, a request by heads of various Commonwealth Caribbean states for a meeting to address concerns with the Prime Minister went unheeded until it spilled into a major domestic crisis, when meetings were speedily arranged and apologies given.

However the situation triggered a larger debate on Britain’s approach towards Commonwealth citizens, and accusations that a determination to bring down net migration numbers had incultured a wider hostile atmosphere for migrants. “If you lay down with dogs, you get fleas, and that is what has happened with the far-right rhetoric in this country,” said David Lammy, a black Labour MP whose persistence on the issue finally brought it to the top of the political agenda. “These people are British,” Ms. May declared at CHOGM, but her assurances will have been seen as too little too late to contradict the sentiment that whatever the perspective of Britain (the current Chair of the Commonwealth for the next two years) on “openness” and “sharing” in the Commonwealth was, it did not really involve migration.

Silence on mobility

Immigration has long been an issue for the Commonwealth as it has for other multinational bodies, but in the wake of the rise of populist forces around the world, and the supposed opportunity the Commonwealth offered as a bulwark against these, the 2018 summit could have presented an opportunity for it (its Western powers in particular) to send a signal that it stood for something different. Sending a message of openness would have indicated a real willingness to revisit and revitalise



the organisation. This was all the more so as Commonwealth proponents have sought to make trade a key plank for it to be a bastion against protectionist moves elsewhere. Yet labour mobility, a demand of businesses globally and certainly of India’s IT sector, was nowhere to be seen in the realms of pledges around cleaning up the oceans, cybersecurity, and pledges to raise intra-Commonwealth trade to \$2 trillion by 2030.

Passing the baton

The summit had been pegged as a game changer for a number of reasons, depending on who you asked. For Britain, Brexit had made the quest for non-European Union partnerships particularly relevant while the attendance by Prime Minister Narendra Modi was widely hailed as an example of the new importance accorded to it by India, one of the largest economies in the Commonwealth. At the same time, the summit came at a time of growing youth-led decolonisation movements globally, not least in Britain where students and sections of civil society have questioned the legacy of the empire and emphasised Britain’s need to demonstrate it had truly moved on. Britain had quickly sought to distance itself from “Empire 2.0”, the title disparagingly given by civil servants to the aspirations of some Conservative party politicians for a post-Brexit Commonwealth trade bonanza with Africa.

Yet if there had been any doubt about the sense of entitlement with which Britain viewed its posi-

tion within the Commonwealth, it would have evaporated as Queen Elizabeth II made an extraordinary intervention on the first day of the summit, making clear her “expressed wish” that her son follow her as head of the community. Leaders duly complied, announcing that Prince Charles would indeed succeed his mother. While details of the discussions were kept as vague as possible, aside from the insistence it was eventually unanimous (so much for the transparency that was also touted in the course of the summit), there seemed little excitement and more a sense of grudging acceptance at the prospect of the new leadership.

The Prime Minister of Grenada, Keith Mitchell, described his thoughts when presented with the clear message from Britain that it wished Princes Charles to succeed. He had thought “maybe yes”, the Caribbean could do with strong male role models – hardly a ringing endorsement. India too went along with the choice, though on the understanding that British royal leadership would not be institutionalised in the future. However, in Britain, questions about his suitability for the role surfaced, and whether he truly had grasped the changed nature of the world and Commonwealth nations that he would be heading.

One woman wrote of her experience at the summit, when Prince Charles commented that she didn’t look like she came from the northern city of Manchester. “That the mooted next leader of an organisation that represents one-third of the people on the planet commented that I, a brown woman, did not look as if I was from a city in the U.K. is shocking,” she wrote in *The Guardian*. It was clear that for all the talk of renewal and an equal voice for all, some nations are treated more equal than others.

The faux camaraderie was highlighted by ongoing speculation over India and Pakistan – rumoured

handshakes and interactions never took place. Joint statements on the supposed steadfast commitment of countries on issues such as tackling sexual violence towards women fell rather flat when confronted with the reality. If there was genuine debate on countries’ ability and willingness to carry through on such stated ambitions, it was not there for the public to see.

The epilogue

Overall there was a sense of being out of touch. The summit was punctuated by rituals and ceremonies out of date with where the world has headed. Pledges of transparency contrasted with the reality on the ground where media participation was largely limited to heavily-stage managed participation in pools, with limited access to proceedings.

This is not to say that the Commonwealth does not have a role at all. London played host to discussions on civil society tackling issues such as modern slavery, the need to clean up the world’s oceans, and malaria. Walking around central London there was a certain buzz to seeing the multicultural city even more diverse than it usually is, including with protesters from various diaspora communities who used the opportunity to express their disapprobation with the governments of their home nations.

There were also national interests furthered. India, for one, has very specific ambitions within the Commonwealth, centered around small island states that form the bulk of the members (and to the cynical, UN votes aplenty to be got on board).

But a multilateral body that can hold its own on the world stage, that gives all nations an equal voice and relevance beyond? The workings witnessed over the past week suggest it is as far away from that as ever.

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Death penalty is not the answer

The focus must be on enhancing rape conviction rates and taking steps to rehabilitate and empower survivors



MAYA JOHN

Amid belligerent demands for capital punishment for rapists, on Sunday the President signed an ordinance that introduces the death penalty for those convicted of raping girls below the age of 12. But this clamour for introducing the most stringent punishment has conveniently sidestepped the more cogent criticism of the systemic failures in addressing increasing sexual violence against women and children.

For those looking at it from the point of view of rape survivors and their bitter experiences with the criminal justice system, capital punishment for rape is the easiest and most convenient demand to raise, yet the most harmful one also for rape survivors. The women’s movement has laid emphasis on the need for the person raped to survive the assault, and in turn be enabled to book the perpetrators.

There are numerous instances of the perpetrators killing their victims, so stringent anti-rape laws are perceived not to be deterrents

but measures that further instigate rapists to attack the victims. In fact, the assumption that the severity of law is an adequate deterrent to crime being committed is a highly contested one, given that brutal rapes in India have not decreased despite enforcement of the Criminal Law (Amendment) Act, 2013 – a piece of legislation which prescribes the death penalty and life imprisonment for sexual assaults that result in death or the victim being reduced to a persistent vegetative state.

Patriarchal undercurrent

Women’s movements across the world have consistently criticised knee-jerk, populist “solutions” to curbing sexual violence that in a highly patriarchal vein overemphasise the sexual aspect of the assault and reinforce the stigma attached to rape. Such “solutions” are seen as undermining the need to address the essential question of the rehabilitation of rape survivors, as well as the question of the complicit role played by state agencies in denying justice to survivors. This critique of capital punishment for rape stems from a concrete assessment of shoddy police investigations, low conviction rates, the overall tendency of hesitation within the judiciary in awarding severe punishment, and the capacity of stringent anti-rape legislation to enhance the propen-



sity of rapists to murder their victims.

The epidemic proportions that child rapes and sexual assaults on women are taking in India necessitates discussion on the entire process: from the initial moment complaints reach police stations to the moment of conviction, but more often, acquittal of sexual offenders.

It is well known that right from the moment the criminal justice system is supposed to kick in, there is unwarranted delay by the police in filing missing person complaints and registering written complaints of sexual assault survivors. The reason for such police inaction is a debate within itself, but often enough, such inaction is connected to prevailing biases of class, caste, religion and gender. What is important to note is that a delay in police investigation amounts to an obstruction of justice since it allows the perpetrators to destroy crucial evidence and cover their tracks by influenc-

ing witnesses, and, sometimes, even the survivor.

The huge difficulty rape survivors face in police stations and hospitals where medical examinations are carried out is another pertinent issue which is continually sidestepped. Such harassment tends to come under the spotlight only in extreme cases, such as the one where a child, after being sexually assaulted and left bleeding, was kept waiting for hours at a civil hospital in Gurugram in March this year.

Further, insensitive methods of police investigation, tardy filing of charge sheets, delayed forensic reports, insensitive counselling, undue disbursement of compensation to rape survivors, aggressive cross-examination of the survivor and her witnesses by defence lawyers, inadequate witness protection, and cumbersome court proceedings have together disempowered rape complainants. No amount of retributive justice can enable rape survivors, especially children who grapple with understanding their experience of hurt, to move on in life if the day-to-day pursuit of justice is an uphill and disempowering process in itself.

Low conviction rate

Instead of harping on the quantum and severity of punishment, we have to highlight the issue of a

low conviction rate for rape. The dismal conviction rate for rape in India is a consequence of complicity of state agencies. It is precisely this which contributes to the culpability of rapists and nurtures the growing impunity with which sexual crimes are committed. This is a reality well captured in National Crime Records Bureau data that show high figures of repeat sexual offenders.

What will work

For the wheels of justice to start turning, it is essential to recognise that the crisis lies in the precise manner in which the existing criminal justice system unfolds. India’s growing rape culture is best reversed by enhancing conviction rates through reforms in the police and judicial systems, and by augmenting measures to rehabilitate and empower rape survivors. We require nothing short of the following: greater allocation of state resources towards the setting up of fast-track courts; more one-stop crisis centres; proper witness protection; more expansive compensation for rape survivors, and an overhaul of existing child protection services. Until these issues are addressed, little will change on the ground.

Maya John, an Assistant Professor at Jesus and Mary College, New Delhi, is a women’s rights activist

LETTERS TO THE EDITOR

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Death for rape

The Criminal Law (Amendment) Ordinance deserves approbation (“Cabinet approves death for rape of girls under 12 years”, April 22). A cursory glance at data shows that there is a mind-boggling number of cases pending under the Protection of Children from Sexual Offences Act in courts across the country. It is imperative that these are put on the fast track and the perpetrators made to pay heavily.

N.J. RAVI CHANDER,
[Bengaluru](#)

■ Keeping aside the debate over the deterrent value of the death penalty, severely punishing those convicted of the rape of minor girls is a

step in the right direction. It is also time that awareness is created about the issue of child sexual abuse irrespective of gender.

NARASIMHA KULKARNI,
[Pune](#)

Impeachment move

Some of the charges brought against the Chief Justice of India by the signatories to the motion for his removal do appear serious, but it is, nevertheless, a puerile act on the part of the Congress party, backed by a few Opposition parties, to have initiated the constitutional process even before ensuring broad consensus on the step within the party itself. The Congress is well aware that it does not have the numbers to bring the motion to its logical conclusion. It could

end up as a misadventure.

S.K. CHOUDHURY,
[Bengaluru](#)

One nation, one poll

The proposal for simultaneous State and Central elections being mooted by eager politicians and vested interests must be debated, intelligently and impartially (Editorial - “Mission impossible”, April 21). The country would gain immense benefits if the idea is applied to State and local body elections instead. For too long, the specific mandate for local bodies to perform and deliver, with the required devolved power and independence, has been only on paper. The damage to urban and rural environments, standard of living, and every other

aspect of life that us non-VIPs encounter on a daily basis is evident. Having simultaneous elections to State Assemblies and local bodies offers far more realistic benefits as: better voter awareness of local body functioning and the role of the State government; better commitment from State governments to allow local bodies to perform; improved chances for the citizen-voter to hold both accountable; and, consequently, more discernible improvement in local governance. As the situation is today, casting our precious votes to distant, media-managed images of individuals who have no role to play in local and day-to-day issues has only been helping in

propagating the mirage of good governance. The suggestion above can also help strengthen cooperative federalism.

R. SWARNALATHA,
[Chennai](#)

■ Simultaneous elections are desirable but given the political culture, they would only help perpetuate the ‘ruler’ mentality of our elected representatives. Public pressure will not work and there exists the danger of political parties waking up in the final year to gain votes through populist measures. To start with, elections to local bodies and State Assemblies can be held together and then expanded to the national level.

ABHIRAJ SINGH,
[Gurgaon](#)

Forgotten people

The idea we have of Jammu and Kashmir is largely one about people facing hardship and militancy. Therefore, the Ground Zero page article, “The Bakherwals’ long walk” (April 21), was an eye-opener, giving us a clear picture of the life of nomadic tribes in this modern day and age. It is unfortunate that communities such as these, who add to the vibrancy of India’s amazing cultural diversity, are now being affected by communal issues. The fact that the Bakherwals are of immense help to India’s defence forces should not be forgotten.

V. ANBARASU,
[Manapal, Tamil Nadu](#)

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