



## Restoring dignity

The time has come to end the stigma and discrimination against the leprosy-affected

It has long been a blot on Indian society that while leprosy is completely curable, there lingers a social stigma attached to it. Even more shocking is that colonial laws that predate leprosy eradication programmes and medical advancements remain on the statute book. These were unconscionably discriminatory from the beginning, but even in independent India, where the law has been an instrument for social change, the process of removing them has been bafflingly slow. The Lepers Act of 1898 was repealed only two years ago. It is time for concerted action to end the entrenched discrimination in law and society against those afflicted by it. Two recent developments hold out hope. One was the introduction of a Bill in Parliament to remove leprosy as a ground for seeking divorce or legal separation from one's spouse, and the other was the Supreme Court asking the Centre whether it would bring in a positive law conferring rights and benefits on persons with leprosy and deeming as repealed all Acts and rules that perpetuated the stigma associated with it. The Personal Laws (Amendment) Bill, 2018, is only a small step. An affirmative action law that recognises the rights of those affected and promotes their social inclusion will serve a larger purpose. It may mark the beginning of the end to the culture of ostracisation that most of them face and help remove misconceptions about the disease and dispel the belief that physical segregation of patients is necessary. It is sad that it took so long to get such proposals on the legislative agenda.

Since last year, the Supreme Court has been hearing a writ petition by the Vidhi Centre for Legal Policy seeking to uphold the fundamental rights of people with leprosy and the repeal of discriminatory laws against them. The court has been approaching the issue with sensitivity and is seeking to find legal means to ensure a life of dignity for them. The 256th Report of the Law Commission came up with a number of suggestions, including the repeal of discriminatory legal provisions. It listed for abolition personal laws and Acts on beggary. The report cited the UN General Assembly resolution of 2010 on the elimination of discrimination against persons with leprosy. The resolution sought the abolition of laws, rules, regulations, customs and practices that amounted to discrimination, and wanted countries to promote the understanding that leprosy is not easily communicable and is curable. The campaign to end discrimination against those afflicted, and combating the stigma associated with it, is decades old. While governments may have to handle the legislative part, society has an even larger role to play. It is possible to end discrimination by law, but stigma tends to survive reform and may require more than legal efforts to eliminate.

## The big squeeze

With sanctions taking a political toll in Iran, allies should facilitate talks with the U.S.

Iran is reeling under the impact of reimposed sanctions after the U.S. walked out of the nuclear deal in May. But the crisis is exposing the strains between the moderate and hardline sections within the Islamic Republic's leadership. Masoud Karbasian, who was removed as Finance Minister on Sunday, is the latest high-profile political casualty in Iran's attempts to counter the effects of a weakening currency and crippling U.S. sanctions. The rial has lost over 50% of its value this year, pushing up prices and compelling consumers to convert their savings into gold and other assets. With mounting public anger over high inflation and alleged corruption, any additional squeeze could worsen domestic tensions. In a prelude to Mr. Karbasian's sacking, through impeachment by parliament, President Hassan Rouhani had in July dropped Valiollah Seif as the central bank governor, for incompetence in handling the fallout from the currency crisis. Thanks to the relief from punitive sanctions after the nuclear deal had taken effect, Tehran managed to double its oil exports, climb out of a deep recession and contain inflation. With the return of economic sanctions, Iran has been prohibited from using the U.S. currency, and faces a bar on trade in cars, metals and minerals. In an effort to mitigate their impact, Abdolnaser Hemmati, the new central bank chief, has announced a relaxation of foreign exchange rules, creating access to subsidised hard money for purchase of essential commodities. He also declared the reopening of currency markets. But more difficult times loom, with the next round of sanctions that kick in by November aimed at impeding Iran's energy exports and financial dealings with its central bank.

The global community must weigh in to ease U.S.-Iran tensions. There is little appetite in the U.S. for a direct military confrontation; Iran too is under no illusion about its military capability. But there remains the risk of an Iranian blockade on the Strait of Hormuz, the passage for about a third of global seaborne oil shipments. It would disrupt supplies and cause panic in global markets. Despite the hawkish tone adopted by his National Security Adviser John Bolton, U.S. President Donald Trump has offered to hold unconditional talks. Rather than prejudice any possible outcome that could result from engaging an unpredictable Mr. Trump, the Iranian leadership should respond favourably to the idea. With much to lose from Iran's international isolation, the European Union should exert diplomatic pressure to renew talks. A fresh nuclear agreement appears to be a remote possibility at this stage. Conversely, even small relief from economic sanctions would bring some leverage at home for the beleaguered Mr. Rouhani. Recent protests have reflected a yearning for progress and greater freedom among ordinary Iranians. The centrist President should help advance such an agenda.

# Rescue, relief and renewal

The Kerala model of disaster management shows how we can rethink our style of governance



SHIV VISVANATHAN

Disasters as narratives tend to follow a predictable grid. They begin with a moment of scandal or crisis, move to limited period of action, and slowly fade into indifference. People get tired of consuming disasters and move on. Policy echoes the usual clichés and fades away, only the victim continues to struggle fighting to recover her sense of citizenship. But disasters as narrative clichés eluded the Kerala floods of 2018.

### Leading from the front

The Kerala flood has been huge in scale and almost unprecedented. One has to go back to 1924 to think of a flood of a similar scale. Yet this is one disaster that has avoided exaggeration. A wise observer, in fact, said, "This is a flood that has avoided sentimentality. The response is realistic and pragmatic. Citizens have moved into action and yet they knew the limits of aid and relief." Central to this, in style and leadership, is the role of Kerala Chief Minister Pinarayi Vijayan, who has been a hands-on administrator. Interestingly, he has set a style emphasising concern with no self-denial, a clear-cut statement of the scale of the problem and the long-range effort required to address it.

Mr. Vijayan has no time for blame games or electoral politics. His even-tempered handling of the

Centre and the southern States reflects a maturing of leadership. By avoiding nipping, he has brought a new maturity to the discourse on floods. There are no blame games but he is clear about the chain of responsibility. He has signalled that his concern is with people first, regardless of ideology or religion. He has made sure that relief is not parochialised or seen through a party lens. He might be of the Communist Party of India (Marxist), or CPI(M), but he has convincingly acted as the Chief Minister of Kerala. All the malignant rumours spread by the right wing asking people to deny aid to Kerala as it helps missionaries leave him cold. He is clear about focus and priority, clear that this is not the time for electoral bickering or factional politics.

The very style of Mr. Vijayan's presence has opened up the discourse. The debate now is not a short-run narrative about relief, but a larger discussion on the flood as a metaphor for Kerala's development. People are listening to each other. One saw it when Madhav Gadgil, our leading ecologist, argued that heroism is not enough. The Kerala flood has to be read also as a man-made disaster. It could not be dismissed as originating in excess rain.

Mr. Gadgil, people realised, was raising a set of long-range questions about the nature of Kerala's development which both the CPI (M) and the Congress have been party to. The general response was open-ended because the audience realised that he was not arguing for his report. What he was looking at is the mitigation of future suffering. Politics and science met to create this mutual responsibility for the future.



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The power of the narrative is that timelines were established, and timelines also defined the nature of responsibility. The quality of the debate, in fact, borrowed from the tenor of the response of the people. Kerala responded with dignity and courage. Over a million people went to temporary camps, realising that their houses had been destroyed or damaged.

### A social solidarity

The responses, especially of older people, added to the dignity of the discourse. Kerala did not behave like a victim population. It insisted on agency and created the ground for citizenship. Keralites outside the State responded immediately; and between the style of governance and the spirit of voluntarism, Kerala created a social solidarity which was almost unique. People owned up to each other and voluntarism added a powerful sense of competence and sympathy. It is this exemplary notion of citizenship that set the contours of the debate. The survivor and the victim insisted that they are citizens, and this elaboration of citizenship in disaster situations makes Kerala an exemplar of a democratic imagination. Suffering found a language beyond the political economy, but suffering also found a long-range locus in ecology and development. The flood became not an act of god or nature, but a social event to be analysed sociologically.

Even if the Centre responds locally and parochially, the Government of Kerala realised that in the long run, floods not only challenge the democratic imagination but ask us to reconsider the future of federation. When there were suggestions from West Asia of a grant beyond the Centre's dreams, the Bharatiya Janata Party (BJP) regime at the Centre refused. The question was whether old dreams of statist autonomy could be questioned or does foreign aid still carry that touch of stigma. Sadly, the BJP goes ecstatic over NRIs in Sili-con Valley but understands little of their role in the political economies of the Gulf states.

But more than state, what was renewed was a sense of the social. There was a recognition that the floods have erased the Kerala of the last phase. A new society has to be invented to replace the old. The standard disaster narrative of rescue, relief, rehabilitation is yielding to rescue, relief, reconstruction. Mr. Vijayan is clear that a new Kerala reflecting on ecology and development has to be invented. The old resilience has to be backed by a new infrastructural sustainability. As Mr. Vijayan himself said, during the 1924 flood there was one dam, "while today there are a total of 82 dams, including 42 major ones". New forms of control and sustainability have to be invented. Behind it there was a sense that governments must use disasters as moments of paradigmatic change. To

build infrastructure of the kind Kerala need will take at least two decades. A flood becomes an initiation to rethink democracy and governance, reconnecting it to issues of environment, culture and livelihood.

Yet there are issues still to be worked out. Mr. Gadgil is right. One needs an ecological insight both as a moral and economic imagination. Nature has to be rethought as an act of trusteeship. Its force and fury have to be understood. A survivor was cited as claiming that the river has reclaimed its lost self. Maybe it is time Kerala, which combines traditional and global in creative ways, rethinks its lost ecological self beyond consumption and the amnesia of development.

### Learning to remember

Finally, one has to emphasise the biggest danger, one of the greatest faults of the old model of disasters. For all their scale and the scandals of new ideas they raise, disasters as policy memory are forgotten too easily. Old lessons are never learnt and new ones also forgotten. A disaster as a narrative must possess the quality of storytelling. Like a fable it must be repeated again and again, retold and rethought. The storyteller and the policy-maker must weave a new tapestry where the floods renew and rebuild a new Kerala. Talk of suffering has been translated into new models of justice. One hopes Kerala creates new panchayats of the mind to work on this problem.

Shiv Visvanathan is an academic associated with the Compost Heap, a group in pursuit of alternative ideas and imagination

# Ways to read the Constitution

'Sabarimala' is a test case for freedom of religion, women's rights and also constitutional interpretation



THULASI K. RAJ

The arguments before the Supreme Court around the entry of women of a certain age to the Sabarimala temple in Kerala raise issues about religious freedom, gender equality and the right of women to worship. The petitioners have argued that discrimination based on biological reasons is not permissible going by the constitutional scheme. They maintain that due to the current exclusion, the right of women to worship the deity, Ayyappa, is violated.

On the other side, the Devaswom Board and others in support of the ban have cited it as an age-old custom. It forms a part of 'essential religious practice' of worshippers under Article 25 of the Constitution. It was also urged that matters such as who can or cannot enter the temple are covered under the rights to administer and manage religious institutions, under Article 26.

A specific argument made in the court, based on Article 17, triggers interesting thoughts on constitutional interpretation. In support of the petitioners, it was argued that the exclusion is a form of 'untouchability' since the exclusion is solely based on notions of purity and impurity. But this argument

was resisted on the contention that the prohibition of untouchability was historically intended only to protect the interests of the backward classes. The claim is that the makers of the Constitution never envisioned including women within the ambit of untouchability.

### Two approaches

The two arguments reflect the two approaches to reading the Constitution. The first is the 'original intent' approach which is based on the intent of the framers of the Constitution when they drafted the text. For example, an originalist will adopt a certain understanding of a constitutional right – say, the right to same-sex relationships under the right to liberty promised under Article 21 only if she is convinced that the drafters intended that. She may argue that the framers never thought of such a situation and, therefore, a same-sex couple cannot have a constitutional right under Article 21.

In fact, a similar argument has been made in the debates in India on homosexuality. Article 15 enjoins the state from discriminating on grounds such as religion, caste and sex. By relying on the originalist approach, it was asserted that the makers of the Constitution meant the word 'sex' under Article 15 only in the binary sense of 'male and female'.

Over time, originalism as a method of constitutional interpretation has been subject to serious criticism for being too rigid and inflexible. In *B.C Motor Vehicle Refe-*



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rence (1985), the Canadian Supreme Court, while rejecting originalism, said that such a method would mean that "...the rights, freedoms and values embodied in the Charter in effect become frozen in time to the moment of adoption with little or no possibility of growth, development and adjustment to changing societal needs."

The second approach – the 'living tree' doctrine – is very prominent in Canadian jurisprudence. It involves understanding the Constitution to be an evolving and organic instrument. For the living tree theorists, it matters little what the intentions were at the time of Constitution making. What matters the most is how the Constitution can be interpreted to contain rights in their broadest realm. The moral reading of the Constitution, propounded by Ronald Dworkin, also complements the living tree approach. Dworkin says in *Freedom's Law* that "according to the moral reading, these clauses must be understood in the way their language most naturally suggests: they refer to abstract moral princi-

ples and incorporate these by reference, as limits on government's power."

### A specific acknowledgment

Certain observations about the abolition clause are important. Article 17 is emphatic in its wording: "Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law." It is peculiar since it abolishes a social practice in any form. All the other provisions in the same chapter lay down substantive fundamental rights.

In spite of the specific equality and anti-discrimination guarantees in the Constitution, Article 17 is inserted to specifically acknowledge and remove the social stigma associated with certain castes. It was enacted in an attempt to eradicate historical inequality. V.I. Muniswamy Pillai said in the Constituent Assembly that "the great thing that this Constitution brings to notice, not only to this country but to the whole world is the abolition of untouchability."

The 'living tree' approach – being an alternative and a finer reading of the Constitution – supports a broader interpretation of Article 17. Now, even if the framers of the Constitution intended this provision to address a specific category of discrimination, what prevents the constitutional court from adopting an interpretation to include women under Article 17?

Women have been kept out of

Sabarimala because of menstruation. As a distinct class, they are being discriminated against. If certain castes are considered 'impure' because of their social status, menstruating women are considered to be so because of their gender. The criteria are different but the effect of exclusion is common. It seems that such an interpretation does not do any violence to the language and content of Article 17, but only emancipates it.

In *Living Originalism in India: Our Law and Comparative Constitutional Law* (2013), Sujit Choudhry argues that untouchability and the exclusion of the homosexuals are comparable. He says that "the treatment which homosexuals experience today is similar in kind to that which 'untouchables' experienced and which prompted the adoption of Article 17, in that the treatment of homosexuals likewise flows from their social status." This is a case where discrimination is based solely on sexual orientation.

Therefore, in essence, the Sabarimala case is a test case not only for freedom of religion and women's rights but also for constitutional interpretation. It presents to the court an exemplary opportunity for an alternative reading of the Constitution. If the court indeed reads Article 17 to have a wider meaning, it will signal a new era of transformative constitutionalism in Indian jurisprudence.

Thulasi K. Raj is a lawyer in the Kerala High Court

## 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.

### Rahul in Europe

The European tour of Congress president Rahul Gandhi is turning out to be an exercise only to criticise Prime Minister Narendra Modi and the ruling Bharatiya Janata Party ("BJP ruining institutions: Rahul", August 27).

This does not augur well for a political leader who aspires to become prime minister one day. The hunger for power has only clouded Mr. Gandhi's vision and understanding of the respect that ought to be extended to the head of government. As a political leader it is strange that he has not focussed on the substantial issues that affect the India diaspora and on how his party would value their contribution. He has also failed to use the opportunity to dwell on his party's game plan for 2019

and win back the trust of the electorate.

R. PRABHU RAJ,  
Bengaluru

■ Whatever the political differences the Congress and the BJP have, Mr. Gandhi, as the Congress president, should not have spoken about Indian politics while abroad. How long will our leaders continue to blame one another? The core issues of the country are being ignored, inhibiting the country's progress.

MOHD. FAHEEM,  
Mumbai

■ It is strange that the Congress president is trying to say that the party is not responsible for the 1984 Sikh riots even after it has been established beyond reasonable doubt that the violence was triggered by the Congress. Has Mr. Gandhi forgotten about the apology

made by then Prime Minister Manmohan Singh in 2005 and also Congress chief Sonia Gandhi expressing her regrets?

One fails to understand why senior Congress leaders, including Punjab Chief Minister Amarinder Singh, are keen on backing Mr. Gandhi ("Punjab CM backs Rahul's view on riots", August 27). The Congress cannot pretend to be lily white.

K.R. SRINIVASAN,  
Secunderabad

■ The way Mr. Gandhi has tried to exonerate his party in the horrendous anti-Sikh riots of 1984 is ludicrous. One needs to remind him of the Nanavati Commission report. The riots will remain a blot on the Congress. One expects more mature and conscious remarks from a man who heads the grand old party and aspires to

become the Prime Minister one day.

MURARI MOHAN,  
Kolkata

■ The Prime Minister is only getting a taste of his own bitter medicine as an increasingly confident Mr. Gandhi takes him on. It is the Prime Minister who criticised previous regimes when abroad. It was Mr. Modi who in Seoul said: "There was a time when people used to feel that what sin they committed in their past life which resulted in taking birth in India ...". Mr. Gandhi's criticism is the political statement of an Opposition leader against the policies and performance of the incumbent government in a democracy.

S.K. CHOUDHURY,  
Bengaluru

### Militancy in Valley

The spurt in the number of

locals joining militant groups in Kashmir is disturbing (Page 1, August 27). The situation in the Valley is already volatile, made worse by stone pelters. Having more disgruntled youth add to this will only exacerbate the law and order problem. The Centre needs to act swiftly by keeping a close tab on the activities of certain elements. It is better to act now than to repent later.

P.K. VARADARAJAN,  
Chennai

### State of cricket

The Duleep Trophy has become a farce and a

disgrace ("Sport" page, "Nadeem, Rasool spin a web around India Blue", August 27). The match between India Red and India Blue, with India Blue struggling at 128 for 8 wickets, was called off. I wonder why, especially when there was an hour of play left and 15 overs remaining. The India Red team's remark was shocking. The captains and the officials are a disgrace to the game of cricket. This is a sad reflection on Indian cricket.

S. VENKATARAMANI,  
Chennai

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### CORRECTIONS & CLARIFICATIONS:

With respect to the creation of legislative council in the States, the Editorial "Council conundrum" (Aug. 27, 2018), said: "The State Assembly has to pass the resolution for the creation of the Council by a majority of its total membership." Actually, a special majority – a majority of not less than two thirds of the members of the Assembly present and voting – is also required for this purpose.

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