Detention no cure

The amendment to the Right to Education Act will only undermine its intent

The legislation to amend the Right to Education Act to give States the power to detain students who fail an examination in Class 5 or 8 is a negative measure. Although many States want such a change, the amendment passed by the Lok Sabha goes against the view of many educationists, who argue that it would weaken one of the progressive features of the RTE Act, which is to guarantee the continued presence of the child in school during the formative learning phase. The proposed change will allow State Boards to declare a student failed and detain her on the basis of an examination, although Section 30(1) of the RTE Act holds out the assurance that no child shall be required to face any Board examination till completion of elementary education. There are genuine concerns on learning outcomes produced by India's schooling system. But these are determined not only by a student's effort but also by the number and quality of teachers, processes for continuous assessment and, crucially, active engagement of parents and the community in encouraging excellence. It is the lack of attention to some of these determinants that has created what Human Resource Development Minister Prakash Javadekar calls a "broken" school education system. Detaining already disadvantaged children can only break it further, and render the RTE Act a dead letter.

The case to replace the no-detention provision with one that reintroduces examinations in grades 3, 5 and 8 was made by a sub-committee of the Central Advisory Board of Education set up to review the provision, but its assumptions were faulty. For one, it concluded that the crucial guarantee could be implemented only under ideal conditions, and these were not available, while the pioneering RTE Act wanted to extend it to all grades within its purview. Yet, the provision is central to the objects of the law, since it seeks to check dropouts and enable all children to attend school in order to derive benefits that go beyond rote-learning. In fact, in 2016 the NITI Aayog found, based on a study in Punjab, that bringing back detention in elementary schooling would increase the dropout rate, impacting the poor and Dalits the most as they depended on government institutions. Besides, the proposed 'cure' may make another problem worse: when parents are unable to ensure regular attendance of children due to social circumstances, it is inconceivable that detaining them for non-performance will act as an incentive to attend school regularly. The move to introduce examinations as filters has not been fully thought through, and may be a hasty response to demands from State governments which want to be seen as acting firmly in favour of quality. Tinkering with the RTE Act without sufficient thought will erode a major constitutional achievement.

Sanctions relief

The resolution of the CAATSA stand-off will let India and U.S. address other bilateral issues

The U.S. Congress's report allowing the introduction of a presidential waiver of its controversial Countering America's Adversaries Through Sanctions Act (CAATSA) will be greeted with a sense of relief in both New Delhi and Washington. The two governments have been working hard to avert a stand-off over the issue. The matter was particularly heated with India making it clear it would go ahead with the S-400 Triumf missile system deal with Russia regardless of the U.S. law and the threat of sanctions. CAATSA, signed reluctantly by President Donald Trump last August would have forced his administration to impose sanctions on any country carrying out significant defence and energy trade with sanctioned entities in Russia, Iran and North Korea. Mr. Trump had objected, arguing that the law took away his powers to decide on such matters. Indian delegations led by the Foreign Secretary had made a three-fold case for the waiver: that no weapons India bought would be used against the U.S.; that the U.S., which wants to partner with India in the Indo-Pacific, would hamper India's military abilities by applying the sanctions or denying the country crucial technology; and that India has significantly reduced its dependence on Russian military hardware while increasing defence purchases from the U.S., and it would be unfair if the U.S. rewarded the effort with punitive measures. After months of testimony, including a final push for waiver for countries like India, Indonesia and Vietnam by U.S. Defence Secretary James Mattis a few days ago, the Congressional committee has relented. The Joint Explanatory Statement of the Committee of Conference, which reconciles House and Senate versions, has accepted the need for waivers. The "modified waiver authority", or amendment to Section 231 of CAATSA proposed by Congress, allows the President to waive sanctions in certain circumstances, for six months at a time, as long as he certifies that it is in the U.S.'s national security interests and does not "endanger" ongoing operations.

While the resolution of CAATSA-related sanctions is welcome, it isn't the only irritant in the U.S.-India relationship that needs the attention of the External Affairs and Defence Ministers at the '2+2 dialogue' with their American counterparts scheduled for September. The sanctions proposed by the Trump administration for energy trade with Iran still loom, as do possible punitive measures at the World Trade Organisation over tariffs and counter-tariffs the two countries have imposed on each other. New Delhi will also be aware that the waivers are contingent on Mr. Trump's continued support to Indian defence requirements. Given the capricious and unpredictable policy swings Mr. Trump has shown, it will be prudent for New Delhi not to presume that the problems over CAATSA have fully blown over.

The Sabarimala singularity

If the Supreme Court looks beyond the essential practices doctrine, it can lead to a radical re-reading of the Constitution

SUHRITH PARTHASARATHY

The Supreme Court is currently hearing oral arguments in *Indian Young Lawyers Association v. State of Kerala*, in which rules that bar the entry of women aged between 10 and 50 years into the Sabarimala temple in Kerala have been called into question. At a purely unreflecting level the case might well appear to us to be an easy one to resolve. To prohibit women from entering a public space, from worshipping in a shrine of their choice, one would think, ought to be anathema to the tenets of a constitutional democracy. But, as a study of the rival contentions made before the five-judge Bench that heard arguments shows us, the religious freedom clauses in the Constitution are possessed of a special complexity, which the court's own past jurisprudence has turned into a quagmire of contradictions.

Freedom of religion

Generally, the right to freedom of religion of both individuals and groups is recognised as an intrinsic facet of a liberal democracy. The Constitution memorialises these guarantees in Articles 25 and 26. The former recognises a right to freedom of conscience and a right to freely profess, practise, and propagate religion, subject to common community exceptions of public order, morality, and health, and also, crucially, to the guarantee of other fundamental rights. Article 25(2)(b) creates a further exception to the right. It accords to the state a power to make legislation, in the interests of social welfare and reform, throwing open Hindu religious institutions of public character to all classes and sections of Hindus. Article 26, on the other hand, which is also subject to limitations imposed on grounds of public order, morality, and health, accords to every religious denomination the right, among other things, to establish and maintain institutions for religious purposes and to manage their own affairs in matters of religion.

Until now, most cases involving a bar of entry into temples have involved a testing of laws made in furtherance of Article 25(2)(b). For example, in *Sri Venkataramana Devaru v. State of Mysore* (1958), the Supreme Court examined the validity of the Madras Temple Entry Authorisation Act of 1947, which was introduced with a view to removing "the disabilities imposed by custom or usage on certain classes of Hindus against entry into a Hindu temple." The court upheld the law on the ground that statutes made under clause 2(b) to Article 25 served as broad exceptions to the freedom of religion guaranteed by both Articles 25 and 26.

Conflicting claims

But here, in *Indian Young Lawyers Association*, the attack is to the converse; it is to Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965, which states, "Women who are not by custom and usage allowed to enter a place of public worship shall not be entitled to enter or offer worship in any place of public worship."

It is by placing reliance on these rules that the Sabarimala temple prohibits women aged between 10 and 50 years from entering the shrine. It claims, through the Travancore Devaswom Board, that its deity, Lord Ayyappa, is a "Naisthik Brahmachari," and that allowing young women to enter the temple would affect the idol's "celibacy" and "austerity". At play, therefore, in the case is a clash between a series of apparently conflicting claims: among others involving the temple's right to decide for itself how its religious affairs ought to be managed, the rights of a community of devotees who believe that a bar on women's entry is an essential religious practice, and the rights of those women seeking to assert not only their freedom to unreservedly enter and pray at the shrine, but also their rights to be recognised as equals under the Constitution.

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Traditionally, to resolve tensions of this kind, the Supreme Court has relied on a very particular jurisprudence that it has carved for itself to determine what manners of rituals and beliefs deserve special constitutional protection. This doctrine requires the court to define what constitutes, in its own words, an "essential religious practice". Judging by its reaction to arguments made in *Indian Young Lawyers Association*, it appears that the Bench sees this canon as integral to how the case ought to now be decided. Indeed, the petitioners have argued that the ban enforced on menstruating women from entering the Sabarimala shrine does not constitute a core foundation of the assumed religious denomination. On the other hand, the Devaswom Board contends that established customs deserve respect, that this particular Lord Ayyappa in Sabarimala is a celibate, and that women of menstruating age are, therefore, forbidden from entering the temple.

Deeper inquiry

Were the court to enter into an analysis of these rival claims, by conducting something akin to a trial on whether there exists a tradition as claimed that is essential to the practice of religion, it would be exceeding the remit of its authority, effectively causing it to shoulder dogmatic power over theology. Therefore, what we need is a subtler yet more profound inquiry. Once the court finds that the Sabarimala temple does not represent a separate denomination (this claim is a particularly difficult one for the Dewaswom Board to meet, given that the temple is otherwise open to the public at large), the court must ask itself whether it should yield to the temple's view on an assumption that there does exist a time-honoured custom prohibiting any women aged between 10 and 50 years from praying at the shrine.

On such a study, the court will undoubtedly notice that most policies of exclusion in India's history have been defended as being extensions of a prescription of faith, of being rooted in culture and tradition. To defer to an association's leaders in matters such as these can only, therefore, have the effect of immortalising discrimination. As Madhavi Sunder wrote in a 2002 paper, to side with "advocates of any singular vision of a community... will often have the effect of silencing (indeed, banishing) dissenters and narrowly defining an association. Worse still, law favouring the autonomy of the group over the autonomy of the individual tends to have the harmful effect of favouring the view of the association proffered by the powerful over the views proffered by less powerful members of the group that is, traditionally subordinate members such as women, children, and sexual minorities."

Indeed, Professor Sunder's pioneering work on cultural dissent represents a fine starting point in any bid to find a progressive solution to the dispute over temple entry. It's easy to see the manifold attractions of a general policy of limited judicial intervention in matters of religion. But the court should see this as an opportunity not to rationalise religious practices, but to overturn its existing passé ideas on the subject. Given the inexorable relationship in India between religion and public life, it's time the court shattered the conventional divides of the public and the private. If the court can look beyond the essential practices doctrine and see this case for what it really is – a denial to women not only of their individual rights to freedom of religion but also of equal access to public space – it can help set the tone for a radical re-reading of the Constitution. This can help the court reimagine its jurisprudence in diverse areas, making a meaningful difference to people's civil rights across spectrums of caste, class, gender and religion. Ultimately, the Constitution must be seen as representing not a hoary conception of boundaries between the state and the individual, but as a transcendental tool for social revolution.

Suhrith Parthasarathy is an advocate practising at the Madras High Court

Different messages, different methods

How India and China are developing their engagements with Africa

HARSH V. PANT & ABHISHEK MISHRA

Africa's global outreach was once driven by its engagement with the developed world. But this is changing as not only are African countries seeking other partners but emerging powers in Asia are also growing in self-confidence and seeing this as an opportunity to tap into. As the visits to Africa by Prime Minister Narendra Modi and Chinese President Xi Jinping this week underscore, both India and China are shaping new narratives of engaging with Africa. Ahead of the 10th Brazil, Russia, India, China, South Africa (BRICS) Summit in Johannesburg (July 25), Mr. Modi visited Rwanda and Uganda while Mr. Xi's itinerary included Senegal and Rwanda, with a stopover in Mauritius.

Taking up the baton

This is Mr. Modi's second trip to mainland Africa after his visit to Mozambique, South Africa, Tanzania and Kenya in 2016. In the last four years, there have been 23 outgoing visits to Africa by the President, the Vice President and the Prime Minister. While Uganda has seen Prime Ministerial-level visits from India in 1997 and 2007, Mr. Modi's visit to Rwanda is the first ever Prime Ministerial visit to the fast-developing East African nation with which India elevated its ties to that of a strategic partnership last year.

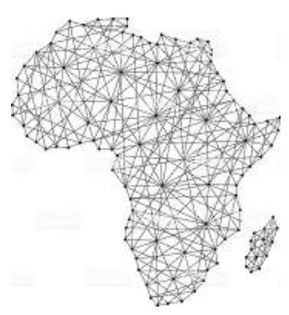
Mr. Xi's visit, his first to Africa after being re-elected in March, comes weeks after the first China-Africa Defence and Security Forum last month in Beijing, which saw a host of African defence ministers and army chiefs in attendance.

For both China and India, bolstering economic ties are of paramount importance though Africa's trading patterns with the Asian giants still remain rather traditional; Africa exports raw materials and imports manufactured goods. While India-Africa trade grew from $11.9 billion (2005-2006) to $62.66 billion (2017-2018), it is still no match to China, which is now Africa's largest trading partner ($166 billion in 2011). The Indian private sector has yet to take full advantage of the investment climate in Africa.

Differences in approach

While trade and investments are only part of the story, Indian engagement lays emphasis on the long term – enhancing Africa's productive capacities, diversifying skills and knowledge, and investing in small- and medium-sized enterprises. China's approach is more traditional – resource-extraction, infrastructure development and elite-level wealth creation. Both India and China are laying emphasis on infrastructure and connectivity projects in priority regions of the world as the next phase of economic globalisation. In China's ambitious Belt and Road Initiative (BRI), East Africa and the Indian Ocean Region are key focus areas.

India's cross-border connectivity with Eastern African countries and Indian Ocean island countries is a natural extension of New Delhi's desire to foster more robust people-to-people connections, increase investment-led trade and business opportunities, and strengthen bilateral partnerships. India is also seeking to reinvigorate its cultural links with East Africa under the rubric of Project 'Mausam', an initiative of the Ministry of Culture, which seeks to revive lost linkages with the Indian Ocean 'world' (East Africa, the Arabian Peninsula, the Indian subcontinent and Southeast Asia). India's African cross-border connectivity has three primary forms: maritime-port connectivity under the government's Security and Growth for All in the Region (SAGAR) and the SagarMala initiative;



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digital connectivity under the Pan African e-Network project on tele-education and tele-medicine (launched in 2004), and air connectivity in the form of direct flights from Indian cities to African destinations.

India, Japan and many African nations have also launched a trilateral initiative, the Asia Africa Growth Corridor (AAGC), to develop 'industrial corridors', 'institutional networks' for the growth of Asia and Africa, and to promote development cooperation. Where the AAGC is a consultative initiative between three equal partners (India, Japan and Africa), the BRI is more of a top-down, unilateral approach to secure Chinese interests, which would eventually traverse continental Asia to reach Europe.

Military ties

Africa features significantly in the security and geo-strategic considerations of both India and China. India's security and defence cooperation with Africa is mainly limited to maritime cooperation in the form of anti-piracy operations off the coast of Somalia, deployment of Indian forces to UN peacekeeping missions in Africa, regular shipping visits, and joint-naval patrolling in the Western Indian Ocean Region. These are mainly with Tanzania, Kenya, Mozambique, and the Indian Ocean island countries Mauritius, the Seychelles, Madagascar and Comoros.

China supports Africa's military transformation by providing equipment, advanced technology, and independent capacity-building in security – and the China-Africa Defence and Security Forum is an important development.

It is inevitable that as the centre of gravity of global politics and economics shifts to the Indo-Pacific region, emerging powers like India and China will begin to play a larger role in Africa. There are significant differences in their approaches, and the challenge for them would be to develop partnerships with African nations in a way that makes Africa a part of their growth stories to.

Harsh V. Pant is Director, Studies, Observer Research Foundation (ORF), New Delhi and Professor of International Relations at King's College London. Abhishek Mishra is a Research Assistant with ORF's Strategic Studies Programme

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.

Water management

The report that the water level at the Stanley reservoir at Mettur in Tamil Nadu has reached its full level is music to our ears ("Stanley reservoir reaches capacity", July 24). It is a result of nature's bounty but also a reminder that we still have not been able to manage our water resources efficiently. In addition to aggressively promoting rain water harvesting –a drive that appears to have lost steam – we need to create more dams and lakes to store water. Today we celebrate talk of converting seawater to drinking water while we are nonchalant about allowing fresh water (from perennial rivers of north India to monsoon induced spate in the south) to flow into the sea. Measures such as estimating water available in shallow aquifers, conserving deeper aquifers, promoting conservation techniques, and redefining the criteria for recycling and reuse of effluents, installation of water meters, groundwater drafting, water auditing, efficient use of recycled water and reuse of water will become crucial.

R. SAMPATH,
Chennai

Art of writing

It is ironic that judgment writing is marred by "unnecessary remarks" being made about women (Editorial page, "The art of writing a judgment", July 24). In *State of Punjab v. Gurmit Singh* (1996) the Supreme Court deprecated casting stigma on the character of a rape survivor. The art of judgment writing must be taught to students from day one.

BHARATHAN BOOPATHI,
Kolkata

■ The importance of accurate, simple and bias-free orders cannot be stressed enough. The age-old example of punctuation saving a man from the gallows comes to mind. The story goes that a verdict read, "Hang him, not leave him." This became, "Hang him not. Leave him."

G.M. JAMES,
Chennai

■ An important function of the judiciary is to also make litigants and the public be aware of their rights through judgment writing, but this is lost sight of because of the oftentimes colossal length and complexity of verdicts. It is also a fact that many find it hard to understand judgments. As a law graduate, I do support the plea for concise and crisp judgments. This will also help to law students.

YASHARTH VIKRAM,
Allahabad, Uttar Pradesh

Chennai accident

It was distressing to read the reports, "Commuters on Chennai train crushed against concrete fence; 4 dead, 6 injured" and "'There were severed body parts strewn around'," (both July 25). It is a common sight to see most local trains bursting at the seams. The inevitable had to happen, resulting in irreparable loss. There are many questions: why didn't the Railways act after the first incident the previous day? Why was there no provision for extra coaches? Accidents do not happen. Accidents are caused.

THAMBUSAMY MOHAN,
Chennai

■ It was horrifying to know that nothing was done despite a gruesome incident having occurred the previous day and at the same spot. The authorities must crack down on footboard travel. The problems that commuters face due to insufficient coaches is cause for concern.

SANGEETHA KAMALESHWARAN,
Salem, Tamil Nadu

Özil's exit

The Mesut Özil episode is a fine example of why sport should not mix with politics (Editorial, "Özil's burden", July 24). The mid-fielder has perhaps only himself to blame given the perception around the Turkish leader. The German football association could have handled the issue better. Though racism exists everywhere, France is a fine example of how Africans have integrated themselves with the French union and are now setting the pace for the French football team. Finally, football is also a team game. To blame a single player for defeat is childish.

T. ANAND RAJ,
Chennai

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CORRECTIONS & CLARIFICATIONS:

In a Business page story "Iran becomes India's No. 2 oil supplier" (Business page, July 24, 2018), there was a reference to the withdrawal by Washington from a *2005* nuclear deal with Tehran. It should have been *2015* nuclear deal.

A sentence in "What is the GDP deflator?" (Explainer, Business Review page, July 23, 2018) said: "Nominal GDP differs from real GDP as the former doesn't *include* inflation, while the latter does." It should be recast to say: "Nominal GDP differs from ... as the former doesn't *adjust* for inflation, while the latter does."

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; 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