



A violent time

The Shopian fury shows a need for a political outreach to various sections in the Valley

Shopian in south Kashmir is on edge. On Sunday five militants, including slain Hizbul Mujahideen ‘commander’ Burhan Wani’s aide and a Kashmir University assistant professor, were killed in Badigam village of Shopian district in an encounter. In protests that followed, at least five civilians died and over 130 were injured in clashes with the security forces. Sunday’s violence capped a week of violence in Jammu and Kashmir, with a death toll of at least 24. Early on Sunday morning, a gunfight broke out after a Rashtriya Rifles unit launched a cordon-and-search operation on a specific input. As the firefight between the two sides began and when security forces rushed in more reinforcements, including para-commandos and the Jammu and Kashmir police’s Special Operations Group, civilians began to gather in protest. Dozens took to the streets, throwing stones at the security forces, who retaliated with teargas and pellet guns. The security forces believe it was a strategy to distract them and facilitate the militants’ escape. The protests were not just limited to the operation site, and clashes were reported from at least two other locations in the Valley. Sunday, unfortunately, was not an unusual day in the Valley. It reflected a new normal, which includes daily violence involving the security forces, civilians and militants, all of it mostly ignored by the Indian political establishment. It not only highlighted how Shopian, once a relatively peaceful area, has been transformed, but also how violence in the Valley shifts to different geographies instead of being confined to traditional militant strongholds.

According to official data, after claiming a few thousand lives annually starting 1990, violence in the State began to decline in 2007-08, with 2012 seeing it dip to 117 deaths. However, starting 2013 it has been climbing back up sharply. The killing of Burhan Wani in July 2016 triggered a fresh round of violence and several dozen local youth have taken up guns since then. In 2017, all of 358 people died in the Valley. Episodic spells of stone-pelting, with the intensity and duration varying, have posed a particularly difficult dilemma for the security forces and the civil administration. The challenge is not only to calm the street and stare down militants. It is to do so in a manner that keeps civilians out of harm’s way, so that alienation does not deepen. That the authorities are failing to do so is evident from reports of increased recruitment by militant groups even in once-tranquil areas such as Shopian. Home-grown militancy is a reflection of alienation, and the alarming reports of its revival demand a security strategy as well as a political outreach. In 2010, the political establishment responded to the summer of intense protests by reaching out to the Valley with an all-party delegation. The Centre must consider sending a similar all-party delegation to the State, before summer sets in.

Price freeze

Abandoning the daily price revision of petrol and diesel sets back an important reform

The price of oil has been shooting up for weeks now, with Brent crude oil futures hitting their highest level in more than three years on Monday, at more than \$75. But for two weeks now, the state-owned oil companies have kept petrol and diesel prices unchanged. Since April 24, the oil companies have abandoned the daily price revision. Since then, the prices of petrol and diesel in the national capital, for instance, are stuck at ₹74.63 and ₹65.93, respectively. This is a glaring freeze, given that since the Centre introduced the dynamic pricing mechanism in June last year allowing oil marketing companies (OMCs) to revise fuel prices daily, the retail prices of various domestic fuels had been on a steady uptrend owing to the steep rise in international crude oil prices. The price of Brent crude oil, it is worth noting, has rallied by more than 50% since June last year. Against this background, domestic fuel prices were raised to their highest level since late-2013 last month until the price freeze began on April 24. The new pricing mechanism also caused prices to show more volatility on a daily basis compared to the earlier regime when prices were revised periodically, mostly on a fortnightly basis. Further, the rise in domestic fuel prices in response to rising crude oil prices has been quite inelastic recently. Petrol and diesel prices rose by 1 to 2% in April while Brent crude rose by more than 8%. This comes as a pleasant surprise considering that domestic fuel prices, which while not falling to an equal extent when crude prices witness a sharp drop, generally keep pace with any rise in oil prices.

The retail price of petrol is a hot political subject and successive governments at the Centre are routinely held responsible for it. It is therefore speculated that the OMCs are under pressure from the government to withhold upward revisions in the days before Karnataka goes to the polls. While Union Minister Dharmendra Pradhan stated last month that the OMCs have not been instructed to refrain from raising prices, no reason for the freeze has been offered. The performance of OMC stocks in the last few weeks also suggests that the markets are not convinced. It bears repeating, in the wake of the upcoming State elections and the general election next year, that the Centre must resist the temptation to go back on its previous reforms to the fuel pricing policy. After all, it is now clear that the policy of offloading the burden of high fuel prices on consumers by transferring the burden on to the OMCs is unsustainable in the long run. The government should opt to ease the burden of fuel taxes. The best way to do this might be to bring domestic fuels under the purview of the goods and services tax. For now, there is enough room to bring down prices by reducing excise duties on oil.

Where the law needs to change track

The recent deaths of schoolchildren at an unmanned rail crossing highlight why the Railways Act must be amended



K. KANNAN

In late April, a bus with schoolchildren collided with a train at an unmanned railway level crossing, near Kushinagar in Uttar Pradesh. Thirteen of them died. This is not the first time that an incident of this nature has occurred, so some questions need to be asked. Is there any mandate for manning all level crossings? In an incident such as this, where the bus driver was reportedly negligent, is the railway administration liable even if the train engine driver cannot be faulted?

Legal issues

We can look for some answers in a 1997 Supreme Court judgment (*Union of India v. United India Insurance*). In May 1979, at Akaparampa in Kerala, 40 passengers and the driver of a passenger bus that had been hired were killed when the vehicle was hit by a train at an unmanned level crossing. Cases were filed before the Motor Accidents Claims Tribunal, Ernakulam, claiming compensation against the owner and insurance company of the bus as well as the Indian Railways. The Tribunal awarded compensation against the owner. The liability of the insurance company was restricted to a measly ₹500 per victim on the basis of restriction of liability contained in the terms of the policy. In appeals taken to the High Court, the Railways too was made liable

for negligence in not making provisions for a gate and personnel to mind the gate. Aggrieved, the Railways went to the Supreme Court. The legal issues addressed by the Supreme Court are instructive for what the Railways was required to do.

A claim for damages for negligence of the defendant falls in the arena of a civil wrong called a tort action. In relation to claims for railway accidents, the Railways Act provides for fixed compensation on predetermined scales. It also provides a forum for passengers to make claims in the form of Railway Claims Tribunals situated in different parts of India. But there is a limitation. Only a passenger on a train can make a claim before the Tribunal. Passengers of a bus or motor vehicle who may have been harmed after a collision with a train can only approach the Motor Accidents Claims Tribunal. However, this tribunal can entertain the claim against the Railways also as a joint tortfeasor if the negligence of the Railways is established.

In the course of the judgment, the Supreme Court borrowed the neighbourhood principle articulated in *Donoghue v. Stevenson* (1932). It said that the duty of care for the Railways extends not only to those who use the Railways’ services but also to people who are “neighbours” – namely, users of vehicles on roads that intersect with tracks. Consequently, there is a common law liability for the railway administration for an accident at an unmanned crossing, even in the absence of specific provisions in the Railways Act, where the Central government can direct the administration to lay manned



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crossings. An action at common law can be filed for nonfeasance because the Railways was involved in what are recognised as dangerous operations and hence is bound to take care of road users.

It took up the issue of whether there could be any breach or a common law duty on the part of the Railways if it does not take notice of the increase in the volume of rail and motor traffic at the unmanned crossing, and if it does not take adequate steps such as putting up gates with a watchman to prevent accidents at such a point. It said that there existed a precedent from England that was examined by the House of Lords – that the Railways should take all precautions that will reduce danger to the minimum. It approved the estimate made in *Lloyds Bank Ltd. v. Railway Executive* (1952) that if 75 to 100 vehicles crossed the level crossing per day, the Railways owed a duty of care at common law to provide for a gate with a watchman. If such a duty can be seen from factual circumstance, the corollary shall be that non-exercise of the power of the government to direct the Railways to lay gates shall be construed as irrational. Alternatively, if the plaintiff had no idea of particularly relying upon the exercise of power by the authority in his favour but is a mat-

ter of general reliance, society could by previous experience expect the exercise of such a power and if such an expectation stood belied, then too a conclusion could be drawn that the non-exercise of power by the authority was irrational. The running of trains by the Railways, as pointed out in *Commissioner for Railways v. McDermott* (1966), has been recognised as inherently perilous and creates a general expectation that safety measures have been taken by the railway administration.

Need for continuous audit

The decision by the Railways to equip all level crossings in India with gates by 2020 does not mean that unmanned gates will be relegated to history. After all, these gates have not come about because the Railways laid tracks across roads and kept these places unguarded. On the other hand, because of the operations of the Railways, where tracks are laid across large tracts of land, there is greater human movement in these areas; in turn, roads are laid across tracks on both sides. The railway administration should have continuous audit of tracks; when new roads come on either side, traffic must be calibrated, adequate infrastructure built, and safety measures put in place. The Railways Act 1989 (through Section 124) provides compensation on strict liability basis. This means that “when an accident occurs in the course of working a railway” (a collision between trains, or when one is a train carrying passengers, or derailment, or any other accident with a train or any part of a train carrying passengers), then whether or not there has been any

wrongful act, neglect or default on the part of the railway administration, an injured passenger or one who has suffered a loss can lawfully maintain an action and recover damages.

Have an amended law

On instructions from the principal Bench in Delhi, in every one of the major accidents in India between 2016 and 2017, the families of victims were contacted by the Tribunals where the families resided, and applications for compensation filed. There was quick adjudication for payments. In the incident of a stampede on a foot overbridge at Elphinstone Road station, in Mumbai in 2017, the Bombay Bench of the Railway Claims Tribunal awarded compensation amounts without any contest from the Railways. Hitherto, responses to claims for compensation arising out of accidents have been on an ad hoc basis but it is time the government amends the Railways Act to provide for compensation on a proactive basis without driving victims or their families to file applications in Tribunals. The ex gratia payments will then be substituted by rights-based compensation regimes that will sensitise the Railways to administer their operations with greater focus on public safety. It is also essential to include within Section 124 of the Railways Act a provision for a claim from a “neighbour to a passenger” in the manner that the Supreme Court recognises, namely, a road user of a motor vehicle.

K. Kannan, a former judge of the Punjab & Haryana High Court, is now Chairman, Railway Claims Tribunal, Principal Bench, New Delhi

Stop this jobs charade

India must debate solutions to the employment problem, as a true democracy should and would



JAIRAM RAMESH & PRAVEEN CHAKRAVARTY

In January this year, the Prime Minister made this statement: “7 million new jobs created in 2017.” The statement draws on false conclusions of a study by two economists.

Here is another: “10-12 million young people join the workforce every year and 7 million new and formal jobs were created in 2017,” said the Minister of State of Civil Aviation, in April. The Minister not only parrots the Prime Minister but also expounds how 10 to 12 million youth enter the labour market every year looking for a job and that the government has created 7 million new formal jobs for them – implying that almost everyone who is looking for a job found one, formal and informal jobs combined.

And another: “6.22 million new jobs created in 2017-18,” said the Vice Chair of NITI Aayog, in April. He goes a step above by giving us a seemingly precise estimate of 6.22 million new jobs being created by the government and resorts to Greek mythology (Cassandra) to berate those who claim that a lack of jobs is a big issue in the nation.

One more statement: “15 mil-

lion new jobs created in 2017,” said a member of the Prime Minister’s Economic Advisory Council, in April.

The icing and cherry on the “jobs cake” is then placed by a member of this Council who claims that even the Prime Minister was wrong and that India did not create just seven million but 15 million new jobs.

And finally we have this: “Only 7.5 million enter the labour market every year looking for a job,” said the former Vice Chair of NITI Aayog, in May.

The former vice chair, contradicting the junior Civil Aviation Minister, also plunged right into the debate by claiming that even though there are 15 million Indian youth of working age every year, only half of them even want a job.

So, according to the former NITI Aayog Vice Chair, 7.5 million Indians are looking for a job. According to the member of the Prime Minister’s Economic Advisory Council, the government has created 15 million new jobs. And according to the current NITI Aayog Vice Chair, precisely 6.22 million jobs have been created.

Hence, summarising all these pundits, every Indian who was looking for a job was besieged with multiple job offers. Perhaps the only thing the government needs to do now is to set up youth counselling centres across the country to help India’s youth decide which of their many job offers they should choose, and match their



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career aspirations.

This comical sequence sums up the sordid saga of India’s jobs problem and the laughable response it has evoked thus far by the Narendra Modi government. Every single ‘Mood of the Nation’ survey (such as Lokniti CSDS, India Today, Centre for Monitoring Indian Economy) shows that unemployment and jobs for youth are the biggest concerns of Indians. Yet, the Prime Minister and his team are squabbling over whether every Indian who is looking for a job got one formal job offer or two.

The debate over jobs has now descended to the point of embarrassment for the nation. This is not how a proud democracy of 1.2 billion people and an estimated \$2.5 trillion economy should debate serious policy issues and challenges confronting the nation.

Data sources

The fountainhead of all these questionable claims over the number of jobs created in the economy is the Employees’ Provident Fund

Organisation (EPFO) data and other datasets, released recently to the public, and earlier, to two select individuals. Ironically, NITI Aayog’s own report in 2017, of the employment taskforce, says: “Additions to EPFO dataset need not represent new jobs. It can only be used to measure the extent of formalisation in the workforce. But even this requires adopting a new definition of formal workers.” Put simply, the government’s own NITI Aayog taskforce discourages making inane and meaningless claims about new jobs being created, using the EPFO and other such administrative datasets.

One single data point from the government’s 2018 Economic Survey is proof of how grave India’s jobs problem is. The survey observed that 90% of all employees in the formal sector earn less than ₹15,000 a month. That is, most of those who are privileged to have a formal job in the country (including experienced seniors) earn less than ₹15,000 a month. One can then impute that new formal sector jobs for first-timers will pay perhaps half – ₹7,500 a month. To put this in context, if a person in India can find no job whatsoever and is forced to enrol himself in the Mahatma Gandhi National Rural Employment Guarantee Act programme, he is guaranteed to earn at least ₹6,000 a month, which is the equivalent of India’s unemployment insurance. If, as our pundits claim, India’s economy is spewing jobs all over and

there is so much demand for youth in formal sector jobs, surely it should reflect in higher salaries than just ₹7,500 a month?

Serious topic

It is time to stop this charade of India being one of the largest job creators in the world (which it will be as in the data of government spokespersons) and get real. India has a big jobs problem, which is evident through various surveys. That is the uncomfortable truth. Let us not couch it in some poetry of jobs versus wages, formal versus informal jobs, on-hand salary versus paper salary, and so on.

The issue of jobs is a global issue that is confronting all major economies today, including the developed ones. We are yet to bear the true impact of automation and other technological disruptions on job creation. It is not about the National Democratic Alliance versus the United Progressive Alliance. It is not about the left wing versus the right wing. As a nation, we have to deal with this very serious issue in a mature manner. Let us begin by accepting a few truths, however harsh they may be. Let us then debate and discuss ideas to find solutions, as a true democracy should and would.

Jairam Ramesh is a Member of Parliament and a former Cabinet Minister. Praveen Chakravarty is Chairperson, Data Analytics department of the Congress party, and a former scholar in a think tank

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.

Exam day

The failure of the Central Board of Secondary Education and the baffling stand of the judiciary in enabling a reasonably stress-free environment for students from Tamil Nadu appearing for the National Eligibility cum Entrance Test 2018 will remain an indelible blot in the educational history of India. The hopes and dreams of many an aspirant have been ruined. The way the examination was conducted is a matter of shame.

T.N. RAMANATHAN,
Chennai

■ The extensive media coverage of NEET has highlighted the serious blunders the CBSE committed in organising the nation-wide examination. Students from Tamil Nadu in particular were subject to extreme mental and physical stress. An examination such

as NEET requires a student to be calm and composed but what he or she went through is anything but that. This is one more instance among numerous others of the common man being made to undergo all types of sufferings on account of the inefficiency or callous attitude of officials in various organisations and who are never held accountable. A re-examination should be thought of.

RAMEEZA A. RASHEED,
Chennai

■ It is clear, after reading the letters (“Letters to the Editor”, May 7), that many are bitter about NEET on the one hand and the way it was conducted this year by the CBSE on the other. Many of the problems students faced would have been averted had they carefully read the dos and don’ts published at the time of inviting applications. The turmoil at the examination centres was

probably on account of the negligence of the candidates and their parents in following instructions that were put out in advance (“Officials play by the book; students and parents cry foul”, May 7). The only point one is in agreement with is about the language option of the examination. Conducting an all-India examination of this magnitude for lakhs of students is no easy task. It involves selecting safe centres, furniture to meet the requirements, selecting trustworthy persons for supervision, renumbering the papers and a host of logistical details. The CBSE must issue a statement on how it allotted centres and how justified some students, parents and sections of the political class are in being upset.

P.K. SHREERAMACHANDRAN,
Chennai

■ The reports show that students and their teachers

in Tamil Nadu need to step up their preparations for NEET. The statement, in a report, by a student who said, “At the school level, we need to be taught how to internalise concepts better and not just go by what we might need to crack the board exams”, says it all (“Changes to curriculum imperative, State board students feel”, May 7).

S. SRIRAM,
Chennai

Let’s debate

The challenge thrown down by the Prime Minister to the Congress president for a debate without referring to papers is one that the Congress leader should accept. It is pertinent to mention that one on one debates without referring to any papers are effective tools to evaluate the worth of the candidates, which are employed in the U.S. presidential campaign for instance. Election campaigns

are occasions to show one’s debating skills. One hopes that Rahul Gandhi accepts the challenge since it was he who made the proposal first. If he turns it down, it does not augur well for him.

K. NARAYAN RAO,
Secunderabad

Shorter hibernation

As a scientist at the Wildlife Institute of India, Dehradun and Member, IUCN/SSC Bear Specialist Group, I found the report “Black bears awake during winter cause trouble in U.S.” (‘Life page’, May 7) interesting. Similar observations have been made in India on Asiatic black bears in the Himalayan region. Our research on Asiatic black bears in the Kashmir region, Jammu and Kashmir, using telemetry has shown that the average hibernation period is now about 65 days. In the past, black bears in the Himalaya would begin hibernation around late November-early

December and wake up by March-end with an average hibernation period of over 85 to 90 days. Rising temperatures in the Himalayan region in the last five decades and a delay in snowfall in December have resulted in a reduced hibernation period for black bears. This has resulted in increasing human-bear negative interactions (conflicts) leading to economic loss for people and retaliatory killing of bears in order to reduce conflicts. Similar observations have been made in Himachal Pradesh, Uttarakhand and Sikkim. With expanding research on the impact of climate change on wildlife species, more such revelations on the changes in species’ behaviour and wildlife-human interactions are expected.

S. SATHYAKUMAR,
Dehradun, Uttarakhand

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