



Dangerous precedent

The EC's order on Sikkim CM's disqualification goes against the anti-graft current in law

The Election Commission (EC)'s order reducing the period of Sikkim Chief Minister Prem Singh Tamang's disqualification from electoral contest is morally wrong and a dangerous precedent that may end up reversing the trend towards decriminalising politics. Under Section 11 of the Representation of the People Act, 1951, the EC indeed has the power to remove or reduce the disqualification attached to a conviction. However, this has been used rarely, and seldom in a case involving a conviction for corruption. Mr. Tamang was convicted under the Prevention of Corruption Act for misappropriating ₹9.50 lakh in the purchase of milch cows for distribution in 1996-97. His one-year prison term was upheld by the High Court and the Supreme Court. He went to jail and was released on August 10, 2018. He was controversially – and in brazen disregard of the Supreme Court's 2001 ruling in the case of late Tamil Nadu Chief Minister Jayalalithaa – appointed Chief Minister by the Sikkim Krantikari Morcha (SKM), which won the election. His appointment as Chief Minister was challenged in the Supreme Court. Meanwhile, he approached the EC for removing his disqualification. His main argument was that the law prevailing at the time of his offence entailed disqualification only if the sentence was for a term of two years or more; and that the amendment in 2003, under which any conviction under the anti-corruption law would attract the six-year disqualification norm, should not be applied to him.

Disqualification from contest is a civil disability created by electoral law to keep those convicted by criminal courts from entering elected offices. It is not a second punishment in a criminal sense. Mr. Tamang cannot argue that disqualification for a one-year term amounts to being given a punishment not prevalent at the time of the offence. The EC decision also goes against the grain of a series of legislative and judicial measures to strengthen the legal framework against corruption in recent years. The apex court has described corruption as a serious malady and one impinging on the economy. In 2013, the protection given to sitting legislators from immediate disqualification was removed. Further, common sense would suggest that disqualification should be more strictly applied to those convicted for corruption. Legislators handle public funds, and there is good reason to keep out those guilty of misusing them. Mr. Tamang, even by virtue of the order reducing his disqualification to one-year-and-a-month, was not eligible to be sworn in, as his disqualification continued till September 10. Yet, he is now eligible to contest a byelection and retain his post. The EC is already battling a perception that its actions are partisan. Its order in favour of Mr. Tamang, coming just a day after the BJP struck an alliance with the SKM for bypolls to be held on October 21, is bound to further strain its credibility.

Testing time

As India plays South Africa, it has the chance to strengthen its Test position

India began its campaign in the ICC World Test Championship on a rousing note a few weeks ago, overwhelming the West Indies 2-0 in the Caribbean. The result put India on top of the nascent Championship table with 120 points, and made Virat Kohli the country's most successful Test captain with 28 wins. It may be argued that the West Indies was not the hardest of opponents, but Kohli's men were hugely impressive. Hanuma Vihari and Ajinkya Rahane scored tough runs while Jasprit Bumrah proved virtually unplayable. Mohammed Shami and Ishant Sharma were relentlessly good too as Kohli rejoiced in the might of his pace battery. His team now has a chance to strengthen its position in the World Test Championship when the three-match series against South Africa begins in Visakhapatnam on Wednesday. India has established a near-impregnable home record, having lost only one of its last 29 Tests on home soil, a record stretching back some six-and-a-half years. Key to that dominance has been the mastery India's spin bowlers have exerted over touring sides, and the home team's superior batting, helmed by Kohli and Cheteshwar Pujara.

At first glance, this South Africa team in transition appears unlikely to offer a stern challenge. When the side was here last for a Test series, in 2015, it was tormented by spin. No South African batsman barring A.B. de Villiers managed more than 150 runs over the four Tests. Indeed only two others even got to triple figures for the series. Faf du Plessis, who is now captain, averaged less than nine. Yet, it would be unwise to consider the current contest a foregone conclusion. Aiden Markram has been in form in the preparatory matches, and in Kagiso Rabada, Lungi Ngidi and Vernon Philander, the visitor has a potent pace attack, even if the conditions are unlikely to favour the three. And India can be vulnerable. There is an over-reliance on Kohli and Pujara. Mayank Agarwal and Hanuma Vihari have played only 10 Tests between them. Rishabh Pant, who was India's wicket-keeper in the West Indies, is still developing as a player. The BCCI selectors have made a bold decision to choose Rohit Sharma as opener. A colossus in One-Day cricket, the Mumbai batsman has failed to convince in the longer format. He will now hope to seize this chance. India will also be without the services of Bumrah, who has suffered a stress fracture in the back. It is not a gap easily filled. This series is also an opportunity for R. Ashwin, in and out of the side, to remind the world of his worth. A rigorous examination awaits South Africa.

The link between jobs, farming and climate

It is imperative to focus on agricultural production in devising a long-term solution to the problem of unemployment



PULAPRE BALAKRISHNAN

At a panel discussion hosted recently by the students of Delhi's Ambedkar University, the topic was, 'Are we heading for an economic crisis?' Presumably, they had been prompted by the all-absorbing news of a slowing economy. It is indeed correct that such a slowing is taking place. Growth has slowed for the past few quarters – the past two-and-a-half years, if we go by annual growth rates.

That this has not been comforting to the government is evident from the fact that its Ministers are running from pillar to post in an effort to goose the economy. But should we be worried?

Those who heard the address to the United Nations climate change summit by the teenager Greta Thunberg earlier this month may not be as worried about economic growth as the government is. Globally, industrial growth driven by mindless consumption is the cause of climate change, now unmistakably upon us. But India does need some growth as income levels here are still very low. The problem of low incomes can, however, be tackled even with less growth so long as it is of the appropriate type. So, the slowing of growth in India cannot reasonably be termed a crisis.

Rural unemployment

There is, however, one feature of the economy that does answer positively to the query of whether

it is in crisis today, and that is unemployment. Figures reported in the report of the last Periodic Labour Force Survey point to a dramatic rise in the unemployment rate since 2011-12, when the previous survey on unemployment was undertaken. Apart from the category of 'Urban Females', the most recent estimate of unemployment shows that it is the highest in the 45 years since 1972-73. But even for 'Urban Females', it is double what it was in 2011-12. For the largest cohort, namely 'Rural Males', in 2017-18, it is four times the average for the 40 years up to 2011-12. These figures should convince us of the existence of a grave situation, if not crisis, with respect to employment in the country. In the average country of the OECD, an increase in unemployment of such magnitude would have triggered a nationwide debate, not to mention agitation on the streets.

The government has responded to the slowing of growth by announcing a range of measures, the most prominent of them being the reduction in the corporate tax rate. While this may have a positive effect, the move is not based on the big picture. The tax cut is meant to be a remedy for stagnant corporate investment. But if the level of corporate investment itself reflects some underlying reality, it is only by tackling the latter that we can get to the root of the problem. A large part of corporate sales is driven by rural demand, reflected in the reported lay-offs by biscuit manufacturers. We do not hear their voices or, more importantly, the government does not, as they are less organised than some other sections of the corporate world, the automobile industry being one such.

The rural picture matters not only because the largest numbers are located there but also because of their low incomes. This means that the future growth of demand for much of industrial production is likely to come from there. After all, how many more flat-screen televisions can an urban middle-class household buy once it already possess one? The high unemployment rate for 'Rural Males' does suggest that we have zoomed in up to a reasonable degree of precision on the site of low demand.

Production decline

We must now answer the question of why rural incomes are growing so slowly. The recent history of crop agriculture points towards one reason. In the nine years since 2008-2009, this activity has recorded zero or negative growth in five. Put differently, in the majority of years, it has shown no growth. The economy has very likely not seen anything like this since 1947.

When growth fluctuations include production decline, a particular feature emerges. Households incurring consumption debt in bad crop years would be repaying it in the good ones. This implies that consumption does not grow appreciably even in good years. Recognising the record of agricultural production is sufficient to grasp what we see in India today. This does not imply that other factors do not matter, and we could imagine several, ranging from low export growth to the state of the banking sector, but this does suggest that poor agricultural performance is a significant explanation of slack domestic demand. Unstable agricultural production first



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lowers the demand for agricultural labour and, subsequently, its supply, showing up in greater unemployment. It has been pointed out that the investment rate has declined. This is indeed correct but this may well be a reflection of the poor agricultural performance. Private investment both follows output growth and leads it. When non-agricultural firms observe slow agricultural growth, they are likely to shrink their investment plans and may not revise their decision till this growth improves. Thus, attempting to influence the private investment rate is to only deal with a symptom. It is rural income generation that is the problem.

Long-term solution

Any long-term solution to the problem of unemployment to which the slowing growth of the economy is related must start with agricultural production. Observing the performance of crop agriculture for close to a decade since 2008-09, we might say that we are witnessing something wholly new in India. It has long been recognised that there is a crop-yield cycle related to annual variations in rainfall but we are now witnessing

a stagnation. Now, unlike in the case of a cycle, recovery cannot simply be assumed. We would need the expertise of agricultural scientists to confirm what exactly is responsible for this state but it would not be out of place to ask if there is not a role for ecological factors in causing agricultural stagnation. These factors encompass land degradation involving loss of soil moisture and nutrients, and the drop in the water table, leading to scarcity which raises the cost of cultivation. Almost all of this is directly man-made, related as it is to over-exploitation or abuse, as in the case of excessive fertilizer use, of the earth's resources. Then there is the increasingly erratic rainfall, seemingly god-given but actually due to climate change entirely induced by human action. A deeper adaptation is required to deal with these factors. Intelligent governance, resource deployment and change in farmer behaviour would all need to combine for this.

It is significant that the reality of an unstable agricultural sector rendering economy-wide growth fragile has not elicited an adequate economic policy response. Policy focus is disproportionately on the tax rate, the ease of doing business in the non-agricultural sector and a fussy adherence to a dubious fiscal-balance target. It is now time to draw in the public agricultural institutes and farmer bodies for their views on how to resuscitate the sector. We may be experiencing an ecological undertow, and it could defeat our best-laid plans for progress.

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A test for judicial review in India

U.K. Supreme Court's ruling on Parliament prorogation is an exemplar on how the judiciary should view executive actions



MANURAJ SHUNMUGASUNDARAM

The highest court in the U.K., earlier this month, found that the actions of Prime Minister Boris Johnson to prorogue Parliament were unlawful. The matter had come to be heard before a panel of 11 Justices, the permitted maximum quota of serving Justices, of the Supreme Court. The verdict had the effect of quashing the Queen's order to prorogue Parliament on the advice of the Prime Minister. By doing so, the U.K. Supreme Court asserted its majesty in the constitutional framework and functioned as the true sentinel on the qui vive.

As legal ramifications of this decision ripple through common law countries and constitutional democracies, what is equally startling is the time taken by the country's apex court to hold and conclude these proceedings.

Prorogation in U.K.

It was known that the Boris Johnson-led government had promised to make Britain leave the European Union by October 31, even if that meant an exit without a deal. The suspicion around actions of the government grew when Mr. Johnson advised the Queen to pro-

rogate Parliament for it to reconvene on October 14. The process was widely perceived to be a sharp and calculated move by the government to conclude the Brexit process with minimal parliamentary scrutiny.

This triggered a legal challenge culminating with the Scottish Court of Session finding that the Prime Minister had misled the Queen with regard to the prorogation of Parliament. Simultaneously, the matter was heard by the High Court of England and Wales, which ruled that the prerogative powers of the government were non-justiciable. These conflicting decisions were handed down on September 11. The appeals emanating from these two courts were heard by the Supreme Court between September 17 and September 19 and the judgment was delivered on September 24. The entire judicial approach, in dealing with a matter concerning the "fundamentals of democracy", underlines the effectiveness of the judicial review process when conducted in a timely manner.

The last parliamentary session in the United Kingdom, which began in June 2017 and lasted more than 340 days, was one of the longest in recent history. The government justified that the prorogation was necessary under such circumstances and also for the preparation of the Queen's Speech.

Accepting these arguments, the Scottish Court of Outer House, in



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the first instance, dismissed the legal challenge on the grounds that this was a matter of "high policy and political judgment" and as such was non-justiciable. Allowing the appeal, the Inner House found that the advice given by Mr. Johnson, which formed the basis for the Queen's order, was justiciable and further, declared it to be unlawful. Upholding this judgment, the Supreme Court confirmed that the prorogation was "unlawful because it had the effect of frustrating or preventing the ability of Parliament to carry out its constitutional functions without reasonable justification." In other countries following the Westminster system of government, this decision should naturally lead to increased introspection of executive actions and provide a boost to due parliamentary processes.

Closer home, there have been at least two key executive actions this year that have undermined parlia-

mentary processes: Reservation for Economically Weaker Sections and the Bills passed around Jammu and Kashmir (J&K). The Constitutional (One Hundred and Third) Amendment Act 2019 providing reservation for Economically Weaker Sections was brought for consideration of Parliament in less than 48 hours from the time the decision was taken by the Centre. By doing so, the government ensured that there was insufficient time for Parliament scrutiny. The Bills around J&K also suffered from a similar defect.

Violation of rules

The Monsoon Session of Parliament was originally scheduled to end on July 26 but was extended to August 7 by the government. On August 5, the Jammu and Kashmir Reservation (Second Amendment) Bill, 2019 was suddenly introduced to the 'Parliamentary List of Business'. When the Rajya Sabha convened, Home Minister Amit Shah, at 11.15 a.m., moved the Statutory Resolution proposing to nullify all clauses in Article 370 apart from Clause(1). Copies of the Bill and the Resolution were not provided to MPs till 11.30 a.m.

The conventional practice is that legislative documents are provided at least a few days before they are tabled. This is done for the MPs understand the contents of the legislation, seek views and formulate their positions better. The manner in which both

these Bills were introduced in Parliament was also in direct violation of the Rules of Procedure and Conduct of Business. In Rajya Sabha, specifically, Rule 69 talks about 'Motions after Introduction of Bills' and 'Scope of Debate'. According to the proviso of Rule 69, there is discretion given to the Chairman in exceptional situations. But, every discretionary power does require that the Chairman must exercise it judiciously and with proper application of mind. There has been no cogent or detailed explanation given by those presiding our Houses of Parliament as to why the government has been allowed to flout parliamentary rules and convention on more than one occasion.

Such actions of governments of Mr. Johnson and Prime Minister Narendra Modi have revealed a complete disregard for established parliamentary processes. This has placed democratic institutions in the peril of being weakened. While the courts in the United Kingdom have made their determinations on these issues, there is sufficient material for Indian courts to assess whether executive actions have indeed undermined parliamentary processes. How the court responds to this challenge will determine the majesty of the judicial review process in India.

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LETTERS TO THE EDITOR

Letters emailed to letters@thehindu.co.in must carry the full postal address and the full name or the name with initials.

Not just Nehru's call

With elections approaching, Amit Shah is back again at the Nehru-bashing game (News page, "Kashmir curbs only in certain minds," Sept. 30), paying scant regard to facts. India's first war with Pakistan in 1947-1948 went on for more than 14 months, much longer than the duration of the subsequent ones between the two nations. Jawaharlal Nehru had resisted intervention in Kashmir till the time Maharaja Hari Singh signed the Instrument of Accession, by which time the tribal invaders backed by the Pakistan Army were already on the doorsteps of Srinagar. In spite of this late entry, the Indian armed forces were able to drive back the invaders till the

present-day Pakistan-occupied Kashmir. But, the war was far from easy, given the mountainous heights, the wintry conditions and many other factors. India had hoped that taking the matter to the UN would help in getting the aggressor to vacate the territories illegally occupied by it. The decision to this effect was taken by the Union Cabinet that consisted of stalwarts like Sardar Patel, B.R. Ambedkar and Syama Prasad Mukherjee. To insinuate that Nehru took this decision on his own without consulting them is to insult these personages. G.G. MENON, Tripunithura, Kerala

Security matters

It is fashionable in the print media today to go over the

Kashmir issue with a fine-tooth comb (Editorial page, "Structures in the name of security," Sept. 30). The writer seems to have ignored that the situation in Ladakh and Jammu are almost normal. But with the mention of nuclear weapons by Pakistan President Imran Khan and with hundreds of terrorists waiting to cross the Line of Control to foment terror in the Kashmir Valley, the government can't close its eyes to the reality that the country's security is important. Hundreds of soldiers and civilians have sacrificed their lives in defending the Kashmir Valley. It will be prudent for observers to wait for some more time for normalcy to be restored there. KANGAYAM R. NARASIMHAN, Chennai

Respect and rewards

It is preposterous for an incumbent Prime Minister to boast that respect for India has gone up around the world since he assumed office. By making such a claim, in one sweep, Prime Minister Narendra Modi has undermined the valuable contributions of all his predecessors. Mr. Modi's visit drew a blank on a number of bilateral trade-related irritants. While several other issues remain unresolved, will the signing of a questionable Memorandum of Understanding for investing \$2.5 billion by Indian PSU Petronet in American LNG company Tellurian soften the hard stance of U.S. negotiators when the two sides return to talks? S.K. CHOUDHURY, Bengaluru

Call for help

Incessant rains have taken Bihar's troubles to its peak. Had this calamity struck in some other State, people would have put up stories on Instagram, added 'hashtags' and changed their profile pictures to muster up support. Where are all the 'woke citizens' of the nation now? People are losing their lives, homes, property and their emotional and physical strength. Rainwater is

entering homes and shops, rendering us isolated. The situation of the poor people, whose means of livelihood have got destroyed and who have no food or water to drink, is unimaginable. Sadly, many of our fellow Indians seem to have forgotten that Bihar too is part of the country and in need of help. MRINALINI, Patna

MORE LETTERS ONLINE: www.hindu.co.in/opinion/letters/

CORRECTIONS & CLARIFICATIONS: >>The year of death of Albert Einstein was erroneously given as 1855 in the "Easy like Sunday morning" quiz (Magazine section, Sept. 29, 2019). It should have been 1955.

>>Wrong headline: An international page story (Sept. 29, 2019) about elephant deaths in Sri Lanka erroneously said that 7 tusk-ers were found dead. It was an editing error.

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, Kasturji 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