



End the violence

And take steps to empower the Gorkhaland Territorial Administration

Longstanding issues such as the demand for a separate state of Gorkhaland in the Darjeeling Hills of West Bengal cannot be wished away with a magic wand. State Chief Minister Mamata Banerjee appears to think otherwise, as if charisma, short-term political tactics, and tokenism are enough. Ms. Banerjee had claimed to have solved the Gorkhaland issue after agreeing to the semi-autonomous Gorkhaland Territorial Administration in 2011, following a series of agitations by the Gorkha Janmukti Morcha. In the years since its establishment, little has been done on the ground to transfer many of the subjects to the body as was promised, rendering the notion of autonomous rule in the Hills rather moot. The hold of the GJM in the Hills was sought to be broken by reaching out to indigenous communities in the region through the creation of various tribal development boards. The GJM, on the other hand, believes that the GTA is just a stepping stone for the creation of a separate State. Legitimate grievances with the West Bengal government on transfer of powers to the GTA aside, the GJM, which has ruled the Authority, too has been guilty of lackadaisical administration. The party also mirrors Ms. Banerjee's Trinamool Congress in Machiavellian tactics, such as dovetailing with the Bharatiya Janata Party in parliamentary elections alone so as to secure support for the statehood demand. The ad hocism and tokenism shown by these two political parties in West Bengal are responsible for the renewed violence in the Darjeeling Hills. For its part, the BJP is caught in a bind – it seems to be sympathetic to the statehood demand, allied as it is to the GJM in the Hills, but is afraid to articulate it openly as it has ambitions in the rest of the State.

The proximate cause for the flare-up in the Hills was the State government's announcement that Bengali should be compulsorily taught in all schools in West Bengal till Class X. Earlier this month the government had also held a cabinet meeting in the Hills after many years, drawing a sharp response from the GJM and other separatist political forces that saw this as a ploy to undermine the GTA's authority. Ms. Banerjee later clarified that Bengali was optional in the hill district, but this was not enough to assuage sentiments as the GJM sought to use this point to ramp up agitations. The whipping up of passions in the Hills has coincided with the rise of Bengali chauvinism in the plains in the recent past. This polarisation does not portend well. The State government must reach out to the GJM and work out a way to transfer powers to the GTA as was promised in 2011. A signal in this direction will go a long way in tamping down the violent agitation. It should also abandon its wishful thinking that short cuts can solve the intractable Gorkhaland issue, which is culturally rooted.

Sunday revival

Pakistan overcame the odds and displayed glimpses of world-beating teams of the past

Pakistan's thumping 180-run victory over India in the ICC Champions Trophy final at London's Oval on Sunday shredded the form book and underscored the team's reputation for being unpredictable. Perhaps India paid the price for banking on its batting might as on winning the toss, Virat Kohli preferred to chase, which is often difficult in a high-stakes final where the scoreboard pressure can be stifling. Only once has India successfully chased a big score in a big-ticket match – Sri Lanka's 274 for six in the 2011 World Cup final in Mumbai. But back then it was Kumar Sangakkara who had won the toss and opted to take first strike. Besides overlooking history, India was unable to counter centurion Fakhr Zaman's brilliance and failed to survive against Pakistan's potent attack. Wasim Akram, one of the greatest fast bowlers, has said he sees a younger version of himself in Mohammad Amir, and on Sunday Amir emphatically lived up to the faith invested in him. He stunned the Indian batsmen and ripped apart the top order, leaving the defending champions wobbling at 33 for three in nine overs. After Amir's precise incisions, there was only one way the match was headed, as the batting wilted, yielding a total of just 158. India was outplayed on all fronts. Extras had been conceded – India gifted 25 to Pakistan's three – and the fielding lacked the passion that Sarfraz Ahmed's men displayed.

Stepping into the tournament, India had shades of Pakistan's traditional troubles, especially with rumours floating about of a cold equation between Kohli and coach Anil Kumble – usually it is Pakistan that grapples with revolts in the dressing room. In any event, the arch-rivals did well to reach the tournament's climactic end. An India-Pakistan final was the tonic that the International Cricket Council needed as viewership soared, and it backed the parent body's earlier decision of not abandoning the Champions Trophy. The latest edition also lent hope about a revival in Pakistan cricket, as the squad ranked eighth walked away with the silverware. Ever since the terror attack on the Sri Lankan team bus in Lahore in 2009, Pakistan has been unable to have its home series in Pakistan, barring the odd fixture. Venues such as Sharjah and Dubai have been the home bases for its bilateral series. The team has mostly struggled, and its last significant triumph was the 2009 ICC World Twenty20 title in London at Sri Lanka's expense. The tournament also had enabled a moment of redemption for Amir, who had once been banned for spot-fixing in 2010. Sarfraz spoke for Pakistan cricket's well-wishers when he said, "Hopefully this will boost Pakistan cricket." The absence of the West Indies, which failed to qualify for this event, was hardly noticed. Yet cricket, a sport with global ambitions but largely locked within Britain's former colonies, cannot afford to watch pedigreed outfits lose their way.

Legislation and legality

In the Aadhaar-PAN case, the Supreme Court has effectively held that policy goals override rights



SUHRITH PARTHASARATHY

At one point in its recently delivered judgment, in *Binoy Viswam v. Union of India*, the Supreme Court described the dispute over Section 139AA of the Income Tax Act, 1961, as falling within a category of what "Ronald Dworkin calls 'hard cases'". The petitioners before the court had argued that the provision, which makes it obligatory on individuals filing income tax returns to link their permanent account numbers (PAN) to their Aadhaar, was unconstitutional as it, among other things, infringed a number of fundamental rights.

The court, however, in declaring this case as "hard", was effectively telling us that its abilities were somehow hamstrung by the nature of the dispute, that despite the strength of the petitioners' arguments there existed principled reasons why it might be difficult for it to intervene. Unfortunately, this assertion flies in the face of American philosopher-jurist Dworkin's ideas which the court sought to invoke.

While at first blush, a quibble over this categorisation might seem a largely frivolous concern, seeing as it is made on apparently pedantic grounds, in reality the court's mistake here goes to the root of why it got its decision in *Binoy Viswam* as it did, and why it so often fails to uphold critical civil liberties when faced with acts of governmental coercion.

Dworkin's 'hard cases'

For Dworkin, "hard cases" are those disputes where "no settled rule dictates a decision either way", and where, therefore, "it might seem that a proper decision could be generated by either policy or principle." In other words, they encompass cases where there ex-



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ists a particularly knotty controversy over deciding what the law really is, where an application of differing value judgments could plausibly result in contradictory identifications of the law.

To illuminate this point, in his book, *Law's Empire*, Dworkin cites *McLoughlin v. O'Brian*, a 1983 House of Lords case involving an automobile accident. Here, Ms. McLoughlin's husband and four children were injured after their car was hit by a lorry. She only heard about the accident a few hours later, and when she drove to the hospital where the rest of her family was admitted, she was told that one child had died and the others were seriously injured. Ms. McLoughlin, as a result of these revelations, suffered a nervous shock, and she later sued the lorry driver whose negligence had caused the accident.

This case, in Dworkin's belief, was "hard" because there was no existing precedent where a person was awarded damages despite being absent from the scene of the accident. To decide such a case, Dworkin said, a judge must view "law as integrity", that "propositions of law are true if they are derived from principles of justice, fairness and procedural due process, which provide the best constructive interpretation of the community's legal practice." In other words, a judge deciding such a dispute must test her interpretation by asking whether her decision could form part of a coherent theory that justifies the entire network of political structure and legal doc-

trine of their community.

The issues in *Binoy Viswam*, however, called for no such Herculean interpretive exercise. Nor did it require the court to indulge in any lawmaking. The facts were simple enough, and the court, notwithstanding its assertions to the contrary, did not have to decide on the "wisdom of the Legislature in enacting a particular law", but merely on its constitutionality. To do this, it only had to apply existing precedent to rule on whether Section 139AA violated one or the other of the fundamental rights guaranteed in Part III of the Constitution. Regrettably, the court's answers to these basic questions are patently misjudged.

Despite keeping arguments over privacy outside the scope of their submissions – given that a larger bench of the Supreme Court has been asked to rule on whether India's citizens possess a fundamental right to privacy at all – there were a number of acute arguments that were made to show the court that Section 139AA violated the rights to equality, to practise any profession, and to personal liberty of the petitioners. However, each of these arguments was dismissed almost on the singular ground that the state has a legitimate interest in making classifications to effectuate its policy decisions. This might seem like an unexceptionable proposition. But in effectively holding that the government has the power to undermine rights to achieve policy goals (an ironic conclusion given that Dworkin, who the court relies on, championed rights as

trumps) the court has accepted, sans reasons, sweeping conclusions drawn by the state.

Casting away concerns

For instance, the court altogether rejected the contention that the Income Tax Act cannot make Aadhaar compulsory when the core legislation, the Aadhaar (Targeted Delivery of Financial & Other Subsidies, Benefits & Services) Act, 2016, makes enrolment in the scheme voluntary. The court did this by accepting as gospel truth the state's arguments that the linking of Aadhaar and PAN can help eradicate the ills of tax evasion caused by a proliferation of black money. Several significant concerns highlighted by the petitioners, which showed that both biometric details and iris scans can be forged, were also swept aside without so much as a mention. As a result, the state's argument was allowed to stand, in spite of the fact that almost no rational nexus has been shown to exist between the government's purported aim of eradicating black money and the classification that Section 139AA makes in compelling individuals alone to secure a unique identity.

The court showed a similar disdain in dismissing arguments made on the arbitrariness that is inherent in Section 139AA. The reasons supplied by the petitioners on why the linking of Aadhaar and PAN is capricious were wholly ignored. For example, the judgment failed to heed to the fact that the consequences of an invalidation of a person's PAN might result in a virtual "civil death", as the senior counsel Arvind P. Datar, who represented one of the petitioners, described the provision. Instead the court invoked the proposition that a legislation cannot be struck down on grounds of arbitrariness alone. To do this, it relied on the verdict from 2015 in *Rajbala v. State of Haryana*, ignoring, in the process, a mountain of earlier precedent where arbitrary state action, including by way of legislation, has been held as antithetical to the guarantee of equality.

Now, it's plain to see that even if Parliament represents the interests of the people, any legislation made by it is a product of the proclivities of the government in power. To check whether a legislation is arbitrary or not is not to question the wisdom of the legislature, but rather to examine whether the classifications that a law makes are rational and to scrutinise whether Parliament has exercised judgment by responding to reasoned analysis as opposed to the whims of motivated interest groups. Here, the court finds no need for such an inquiry because a legislation, it holds, cannot be subject to judicial review for being purely arbitrary.

Arguments on how Section 139AA violates a person's right to practise any profession or carry on any trade under Article 19(1)(g) also met with a similar fate. And this cloud has only the thinnest of silver linings – when a Constitution Bench eventually decides on whether Aadhaar as a collective policy infringes the rights to privacy and bodily integrity (if indeed such liberties are deemed as fundamental guarantees), there remains the possibility that Section 139AA may be rendered void.

But, for now, we're left with a deeply undesirable and unsatisfactory outcome: all those who already possess an Aadhaar card must integrate it with their PAN, regardless of whether they ever imagined having to submit to such a burden at the time of securing the identity, and where any person who files an income tax return after July 1 must have, at the least, applied for a unique identity. As to how this distinction is constitutionally sustainable, the court tells us little. Ultimately, this wasn't a "hard case" to decide. But by getting its conclusions as it has, the judgment's consequences are certainly likely to prove difficult, imposing, as they do, an unreasonable burden on our essential civil liberties.

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Another summer of discontent

Why Mamata Banerjee is in a bind over how to handle the Darjeeling agitation



SUVOJIT BAGCHI

Ten years ago, Prashant Tamang, a constable in the West Bengal police, and an ethnic Gorkhali from Darjeeling, won the television show "Indian Idol Season 3", no mean feat for a young man from a perennially neglected region. Mr. Tamang got additional votes after an appeal to the police force by Zulfiqar Hasan, a joint commissioner in the Kolkata Police, and now an operations chief of the Central Reserve Police Force in Kashmir.

On realising that the Bengal Police were battling for a Nepali singer, many approached the undisputed leader of Darjeeling, Subhash Ghising, to back Mr. Tamang. Ghising's lack of enthusiasm was a boon for his former aide, Bimal Gurung, who soon appealed for votes for Mr. Tamang. Millions of Nepalis voted believing that it would be a step forward to being recognised as Indian and not Nepali. Sitting in a sprawling apart-

ment on Hailey Road in Delhi, Mr. Gurung, who heads the main party, the Gorkha Janmukti Morcha (GJM) in Darjeeling said, in 2009 that backing Mr. Tamang was perhaps his "wisest political move." Mr Gurung followed up Mr. Tamang's success by launching the GJM.

A repeated demand

If Prashant Tamang brought the issue of the Nepali identity and nationality back in focus in Darjeeling's politics in the last decade, it was Bengal Chief Minister Mamata Banerjee who has triggered the issue in 2017. Her government announced that Bengali would be "mandatory" in schools. Though she withdrew the "mandatory" bit, the damage was done.

However, the decision is only the effect of a cause rooted elsewhere. Between 1907 and 1987, demands for a separate Darjeeling were raised on "at least on 15 occasions", notes Tapash Mukherjee, a veteran journalist who has covered Darjeeling.

Sikkim gifted Darjeeling to the East India Company in 1835 and Ghising referred to this transfer of land when he demanded the detachment of Darjeeling. The stand of the GJM on Gorkhaland remains



"largely unchanged in 2017", says the key ideologue of the GJM, Amar Singh Rai, in a recent interview to *The Hindu*. However, many have questioned Ghising's position over the years.

But the demand to treat Darjeeling as a "separate unit" has often returned. Historian Subhas Ranjan Chakraborty, who has stayed and worked in Darjeeling for many years, noted that in 1907 "on behalf of the hill people" of Darjeeling, "a separate administrative unit" was demanded. In 1930, a representative to Sir Samuel Hoare, Secretary of State for India, said that "Darjeeling ... should be excluded from Bengal." So, some say that the argument that imposing Bengali acted as a trigger in 2017 may be too

severe, as something or the other has kept the homeland movement alive.

Simmering within

In Darjeeling, many civil society representatives have argued that the 2017 movement was "simmering inside". It was an anti-GJM movement but not for the reasons as perceived by the government. The Trinamool Congress (TMC) argued that the GJM was losing the people's mandate on account of mismanagement of funds.

In his blog, TMC MP Derek O'Brien has argued that the GJM-run Gorkhaland Territorial Administration (GTA) "received" ₹1,500 crore from the State and the Central governments in the last five years but refused to file the accounts. As the TMC asked for a "special audit", it "rattled" the GJM, the MP said. Moreover, he said that the developmental projects of Ms. Banerjee had resulted in the TMC's victory in recent civic polls which "stunned" the GJM. The TMC is "widely expected to do well" in the forthcoming GTA elections as the Chief Minister's presence has created a "buzz" in Darjeeling and the TMC is committed to work hard, Mr. O'Brien added. However, the question in Darjeel-

ing is not about how committed the TMC is, but why?

Once again, civil society argues that creating a "buzz" – from community board formation to targeting GJM leaders using unparliamentary language – was an attempt to squash the Nepali identity question. Many within the GJM have argued that the party was "reprimanded" in the civic polls – not necessarily for corruption – but for settling for too little autonomy by signing the GTA agreement, 2011. The call for development – and the "buzz" – is thus seen to be an attempt to dilute the Gorkhaland issue.

Bimal Gurung realised that this "simmering" angst could have led to him being replaced had the GJM not relaunched the Gorkhaland movement. He needed an issue and this was when the issue of the imposition of Bengali cropped up. However, the question is this: how will Ms. Banerjee deal with the situation, given that most Bengalis are against the division of the State? Thus for Ms. Banerjee, there is little option but to quell it. Whether she does it with diplomacy or coercion remains to be seen.

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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 journalism

I am with the Readers' Editor, A.S. Panneerselvan, when he says that "sting journalism is not investigative journalism" (June 19). There is an ethical difference between filming a real event as proof of a certain incident and laying a trap for a target by creating an imaginary scenario. Even in the former, what is seen captured on camera may not be the entire story. It has to be supported by other information. In essence, a sting operator plays the role of a mole to entice the target. This is not journalism at all. Sting journalism and paid news have marked a decline in the credibility and integrity of the media. Our media reached its zenith in the 1980s-1990s mainly due to the painstaking work of journalists those days; this was a change from the descriptive reporting in the post-Independence phase. The craze for TRPs in the

electronic media and the temptation to enhance circulation by indulging in sensationalism have to be checked.

Y.G. CHOUKSEY,
Pune

At the Oval and beyond

Congratulations to Pakistan on its emphatic win against India in the Champions Trophy at the Oval. The match, which saw fortunes fluctuate, was vintage stuff at its best ("Sport" – "Inspired Pakistan gives India a hiding", June 19). The bonhomie and sportsmanship displayed by the players of both teams were refreshing. India and Pakistan should play more cricket in future as it will go a long way in furthering the cause of both sports and bilateral ties.

NAGARAJAMANI M.V.,
Hyderabad

■ The much awaited Champions Trophy has come to an end. Thwarting all calculations and

predictions of cricket pundits, India was drubbed in the final by its arch-rival Pakistan, which made a remarkable comeback. Simultaneously, our "forgotten hockey team" crushed Pakistan elsewhere in London on the same evening. All TV channels featured cricket while hockey was given a back seat. Even on June 19, the print media wrote prominently about cricket while pushing the hockey win down the page. Even Kidambi's victory in the Indonesia Open got only a mention while Rohan Bopanna's Grand Slam doubles win at the French Open hardly got the coverage it deserved. All this shows that cricket erodes the value of other sports. Cricket stars are filthy rich; they have no time to practise, as they are continuously engaged in various tournaments without adequate rest and practice sessions. Whatever

time they have is then spent endorsing products. In the final while we marvelled at the fighting spirit and firm grit of Pakistan's players, we saw only a bunch of meek Indian players.

P.P. VENUGOPALAN,
Kannur, Kerala

A football nursery

Sometimes sports becomes an assuaging factor for people bedevilled by the complexities of life ("Weekend Sport" – "In football heaven", April 29). The north-eastern States exemplify that creed. Despite being swamped in the miasma of poverty, underdevelopment and ethnic conflicts compounded by perpetual insurgency, north-eastern Indians have never drifted from professing their passion for football. Any tournament, whether local or a broadcast of a duel between Messi and Ronaldo, is nothing less than a Christmas Day celebration.

However, it is unfortunate that this fervour has not received the focus of the mainstream media or the support of national sport bodies. For long, football in India has been viewed as being a Kerala, Goa or Bengal-centric affair. The recent achievements of Lajong FC or the Northeast United FC and now the Aizawl FC in the I-League

demonstrate the potential of the Northeast to be the El Dorado of quality players. The only impediment in the quality manifestation of their inborn talent is the lack of resources to sharpen their acclaimed football skills.

BIBHUTI DAS,
New Delhi

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CORRECTIONS & CLARIFICATIONS:

A question corresponding to the GSPC (Gujarat State Petroleum Corporation) deal got left out in a 'Business' page interview with the chairman of energy major ONGC. Mr. Dinesh Kumar Sarraf (June 19, 2017). The question was: *How do you justify the acquisition of KG basin block of GSPC for \$1.2 billion? The acquisition of Imperial Energy by ONGC for similar value was questioned and the company had to write down the value of its investments.*

The dateline corresponding to "At Allahabad" – published under "A hundred years ago" (From The Hindu Archives, June 19, 2017) – was erroneously given as June 19, 2017 instead of June 19, 1917.

A front-page report headlined "Monsoon to be delayed over Central India" (June 19, 2017, some editions) erroneously gave the expansion of LPA as low pressure area. It should have been long period average.

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