



Talk it over

The Central government must build politically on the cease-ops initiative in J&K

Home Minister Rajnath Singh’s statement offering talks to the Hurriyat and Pakistan puts a seal on a series of moves by the Centre that signal a softer Jammu and Kashmir policy after two particularly violent years. His offer came a week into the Centre’s suspension of operations, with the condition that terror must end. Just a day earlier, Army Chief General Bipin Rawat had suggested the ‘cease-ops’ plan could be extended. This in itself was significant, as he had earlier taken a very tough line. Last year, launching what he called “Operation All-Out”, General Rawat had said the Army would look “helter-skelter” everywhere for terrorists and anyone sympathising with them. Statistically, the headline policy saw successes, as more than 200 militants were killed in the period after the death of Hizbul Mujahideen commander Burhan Wani in July 2016, which had set off a wave of violence in the Valley. However, according to police estimates, 230 more young men picked up the gun during that time, many of them at funerals of militants. In fact, this became a cycle: as the level of disaffection among the population continued to grow, locals would gather in thousands at funerals, which became recruitment sites. In the past few months, however, the Modi government appears to have taken stock of its J&K policy and changed course rather dramatically. To begin with, the government authorised an interlocutor to speak with “all sections of society”, and he appears to have opened several conversations in the Valley, and nudged the government to declare an amnesty for first-time stone-pelters. Next, the Centre has taken care to back Chief Minister Mehbooba Mufti on a wide range of political issues, including replacing the Deputy Chief Minister, a post held by a BJP legislator. The cease-operations order, that came days before Prime Minister Narendra Modi’s speech in Srinagar, has also helped recast the narrative, and given a pause to the seemingly unending cycle of violence, funeral, encounters and recruitment.

More needs to be done, and soon. To start with, the Centre must review actions by security forces that unfairly stifle ordinary life, such as cordon-and-search operations, restrictions on access to orchards during the fruit harvesting season, and suspension of Internet services. Second, it must act to rebuild the ceasefire on the border with Pakistan, and discuss the issue at a bilateral level. At the same time, it must be alert to all attempts at subverting the cease-ops initiative, which could come from Pakistan or from vested interests within J&K. Finally, the government should get its message out on its vision for a longer-term resolution to reverse alienation amid a polarised debate in sections of the media on the value of the ceasefire, which adds to the sense of anxiety in Kashmir. A window of opportunity has been created. The need now is to move quickly and seize it.

The roaring thirties

CSK may have been IPL’s oldest squad, but it was also its most formidable

At the end of the Indian Premier League, the victory of Chennai Super Kings has an air of familiar inevitability about it. The most consistent franchise since the IPL’s inception in 2008, CSK has played seven finals, including Sunday’s at Mumbai’s Wankhede Stadium. In those pivotal clashes, M.S. Dhoni’s men triumphed in three. Despite being suspended for two seasons – 2016, 2017 – following a betting scandal involving a team official, the new team wore a familiar look. All credit to skipper Dhoni who sported his signature unflappable cool as his team coasted to an easy victory, after some nail-biting finishes in earlier rounds. Right through the season the cameras trained on the CSK dugout showed a Dhoni who was undemonstrative even as he let his players display a gamut of emotions. The captain’s icy demeanour was an antidote to the frenzied twists of Twenty20 cricket. CSK was disadvantaged inasmuch as it had to play all its matches – except the one against Kolkata Knight Riders in Chennai on April 10 – as away games. Its home games were shifted to Pune after protests against holding the IPL in Chennai. Having missed the last two seasons and then being forced to discard the home advantage, Dhoni and company did well to last the distance and get past Sunrisers Hyderabad, the team with the best bowling unit.

Many factors have combined to make CSK an IPL colossus: the retention of core players; the faith invested in old legs at a time when it is believed Twenty20 is all about youth; and the adulation of die-hard fans. Shane Watson’s pulse-pounding unbeaten 57-ball 117 in the final fitted into the template of finding a man for the moment. Dhoni, Faf du Plessis, Lungi Ngidi, Ambati Rayudu, Dwayne Bravo and Suresh Raina had theirs during the tournament. If CSK’s path seemed preordained, it wasn’t easy for SRH as its preparatory phase was in turmoil following its previous skipper David Warner’s role in the ball-tampering crisis that tainted the Tests between Australia and South Africa. The Australian opener was stood down, but the good thing for SRH was that his replacement in the hot seat, Kane Williamson, led well besides striking in tandem with Shikhar Dhawan. The bowlers were on the mark and Rashid Khan was in the thick of action with 21 wickets, handy runs and his display of agility on the field. Afghanistan’s 19-year-old leg-spinner is one of the brightest talents in cricket today and the limelight he drew thanks to the IPL proved that the league is a springboard for emerging cricketers. But as the stardust settles, the sudden retirement of South African A.B. de Villiers from international cricket is a cautionary pointer to the grim reality of leading players spreading themselves thin while turning out for countries, provinces, franchises and clubs.

Looking for a new clarity

Protecting constitutional values requires an independent judiciary. For this, three issues need attention



SUHRITH PARTHASARTHY

The Supreme Court, this past month, provided us with a useful reminder about its worth to our constitutional democracy. Its intervention in the imbroglio over government formation in Karnataka was flawless. The hearings conducted in the early hours of the morning may have been theatrical, but the court’s ultimate decision certainly helped avert a subversion of the Constitution. Yet, much as its decision here deserves appreciation, we must be careful not to allow any ascription of credit to veil the deeper wounds that afflict it, for a litany of problems continues to strike at the court’s independence.

Three of these are especially salient. The first involves the rejection by the government of the collegium’s recommendation of K.M. Joseph, currently Chief Justice of the Uttarakhand High Court, for elevation to the Supreme Court. The second concerns the need for a systemic mechanism to deal with allegations of corruption in the higher judiciary. The third area of worry concerns the embroiled state of Chief Justice of India Dipak Misra, his position as the master of the roster, and the critical question of whether such powers ought to be vested in the hands of one individual.

Recurring problems

At first glance, these issues might strike us as unique to the times that we live in, as examples of crises that will eventually pass. But, on closer examination, it becomes clearer that these are, in fact, recurring problems left unaddressed for decades. In trying to resolve

the issues, therefore, we must ask ourselves how we got here. As A.G. Noorani recently wrote in *Frontline* magazine (“Crisis in Judiciary,” May 11, 2018): “We have not reached the nadir all of a sudden. The decline was long in process.”

In his seminal book, *America’s Unwritten Constitution: The Precedents and Principles We Live By*, Akhil Reed Amar points to how the written constitution often invites us to heed what’s unwritten, which in turn, he writes, “refers us back in various ways to its written counterpart. Like the Chinese symbols yin and yang, America’s written Constitution and America’s unwritten Constitution form two halves of one whole, with each half gesturing toward the other.”

India’s Constitution is possibly the longest written constitution in the world, but it too leaves much unsaid. Take, for example, Article 124. It states that judges of the Supreme Court shall be appointed by the President, after consultation with certain authorities, including the CJI. But it does not tell us how these consultations are to be made, or what criteria ought to be applied in deciding who becomes a judge.

Filling the voids

Filling these voids, therefore, requires the building of conventions that nonetheless maintain a fidelity to the written word. In 1977, in *Union of India v. Sankalchand Sheth*, the Supreme Court sought to do precisely this, when it ruled that the word “consultation” can never mean “concurrence”. But yet it held in the same case that the President can depart from the CJI’s opinion, in making a transfer or an appointment, as the case may be, only in exceptional circumstances. And when the government does so, it must, wrote Justice V.R. Krishna Iyer, in his concurring opinion, be prepared to establish in court that it pos-



sessed “cogent and convincing reasons” for rejecting the CJI’s advice. As a result, in a bid to secure judicial independence, the court, as H.M. Seervai wrote, had read into the Constitution “a requirement which is not there, but which is implicit in the whole object of providing for consultation with the Chief Justice of India.”

Unfortunately, though, the court has in a series of cases rendered the verdict in *Sheth* nugatory. The informed wisdom of Justice Krishna Iyer has been replaced by the undemocratic excesses of the “collegium system”. This method grants primacy to the judiciary (specifically to the CJI and his four most senior colleagues) in choosing its own members but allows government the power to reject recommendations on any ground whatsoever, with only one caveat: if the collegium were to re-recommend the same name, the government is obligated to accept the proposition.

Now, in the present environment, for the immediate purposes, there is no doubt that the collegium must re-recommend Justice Joseph’s name, to protect at least a veneer of the court’s independence. But this still begs the question, what happens if the government vacillates in conforming Justice Joseph’s elevation even after such a re-recommendation?

In all of this, therefore, one thing has become abundantly clear: the collegium system is simply unworkable. Its ills are

Protecting incarcerated women

In the case of non-violent women offenders, community service should be the default punishment



R.K. RAGHAVAN

Much of the discourse on prison conditions stops short of a practical agenda for major reforms. While one reason cited is a paucity of resources, the other is about a mindset that those in jail do not deserve better. Except for a few studies done outside India, most of the material on the subject is superficial, to put it mildly. In prisons across the world, overcrowding, brutality, a lack of sanitation and unacceptable standards of health care are standard.

There is also no liberal mindset anywhere to set the ball rolling on how we can introduce clemency in incarceration. This is cause for concern given the growing aggressive nature of public discourse on treatment of offenders. How can one ignore strident demands for harsher criminal penalties and a higher rate of incarceration?

We see this happen in India where there appears to be blind

public frenzy without a thought being given to the truth being established by rigorous research and a recognition that draconian punishment does not necessarily deter a determined or an impulsive offender.

A case for compassion

In this context, news that “46 children are behind bars in Odisha, for no crime of theirs” (*The Hindu*, May 19, 2018), must focus attention on the status of women prisoners and their children remaining with them during detention. I do not make a plea for a reprieve for women who transgress the law. What I advocate here is a less harsh response to women overstepping the law and some concessions with regard to detention before trial. Crime data show that there is a high rate of simple thefts among women prisoners. In the case of non-violent women offenders, community service should be the main option for reform. A jail term should be the last resort. Once detained, a woman prisoner not only deserves compassion but should also be given standards of facilities more liberal than for men. We may have to go a step further if a prisoner has children living with her in prison. It is the fundamental du-



ty of the state to do everything possible to see to their physical and emotional needs.

On children

In most parts of the world, including India, there are prisons exclusively for women. Tamil Nadu has some, with one recent estimate putting their current occupancy at 25%. Creches for children up to the age of 3 and nurseries for children up to 6 years are available. Older children are entrusted to relatives or voluntary organisations. There are no reliable reports on how well these are run.

In the West, the U.S. has the most acute problem. According to a study (2010), several thousand children lived with their incarcerated mothers at one time, not a shocking number if one takes into account the magnitude of incarceration (2.3 million). The same

study suggested that the U.S. has a third of all women prisoners in the world; about 60% of them have children under 18 years. When children are not with their mothers, contact can be difficult, because no extra consideration is shown to an incarcerated mother.

The European Prison Rules have been modified to make treatment of prisoners in all member-nations more civilised. The World Health Organisation in particular has expressed concern over the reproductive health of women prisoners and the absence of maternal education during pregnancy.

For criminal justice policy makers, there are now three challenges. That a conscious effort should be made to reduce female incarceration is the general consensus. However, there is a general lack of will arising from an assessment that any radical departure from the law and practices is not going to earn votes for a government. It is sad that there is such a lack of empathy despite research that women offenders are themselves victims of crime before they turn to crime. Therefore, there is a clear case for the award of community service to those women who have

been jailed for non-violent offences.

The second challenge is on protecting the children of women prisoners. The one thing common is that most of them do not have physical and emotional support. Many are single parent children, usually with their mothers. This is one more reason why many nations should adopt community service for female convicts who have had no record of violence. It would be an entirely different matter if such a convict commits an offence again after community service. In such cases she would be on a par with a male recidivist.

The final challenge is in protecting women inmates from sexual/non-sexual violence and their forceful initiation into substance abuse while in custody. An all-female warden system is difficult as a small complement of male security staff is needed despite its attendant consequences. In this, technology can play a role.

In the ultimate analysis, prisons can be made safer for women only by a mindset which is convinced that female offenders deserve compassion. When this will happen is anybody’s guess.

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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.

Prevention, the key

Even in developed countries, where the state assures a health cover to its citizens, we are aware that those who require hospitalisation for chronic illnesses and involving surgical interventions are often put on a waiting list. Some of them fly abroad for treatment for a fraction of the cost they would have incurred. But as the adage goes, prevention is better than cure. The Ayushman Bharat scheme has not invested much on this. The State and Central governments need to focus on ensuring better civic conditions in towns and cities. The availability of vaccinations and disease prevention measures need greater attention. The cleanliness drive, Swachh Bharat, has more arm-chair critics than advocates even though it is a necessary step in ensuring a healthier nation.

Society seems to be shirking its civic responsibilities which have a direct bearing on one’s own health (Editorial page, “A health scheme that should not fail”, May 28).

B. SUNDAR RAMAN, Coimbatore

Media stings

At the outset, sting operations are unethical and expose a perverse tendency among a few media houses or journalists to create ripples among a cross-section of society that is ready to lap up any information bordering on sensationalism (OpEd page, ‘From the Readers’ Editor’ - “Lying to get the truth”, May 28). In the past, the Bofors investigation and the exposé on the cement scandal in Maharashtra are examples of investigative journalism which employed painstaking and conventional methods and had greater reach and

acceptability. Resorting to a sting operation exposes a lack of dynamism on a journalist’s part to bring out the facts by means of a fair investigation. It can also result in irreversible damage to the victim. There needs to be a legal stand on sting operations so that journalistic ethics are preserved. With social media now almost out of control and there no way of checking misinformation being spread, journalists have a moral duty to earnestly pursue the rules and the standards for a proper conduct and practice of journalistic principles.

SUBRAMANIAN VENKATRAMAN, Chennai

The new hi-tech scam?

The report on a bitcoin scam unravelling in Surat, Gujarat, was shocking (‘Sunday Special’ - Section 2, “The bitcoin probe unravelling in Surat is a

Pandora’s box”, May 27). That some of the players are expert extortionists in the bitcoin trade is a revelation that should make the authorities sit up and take note. The opinion expressed by a police official that the extortion racket is set to grow as many are keen on making a quick buck is alarming. The authorities should also note a point made by another police officer – that people with a high volume of cash at the time of demonetisation converted their black money into cryptocurrencies with the help of hawala operators. As a senior citizen struggling to get decent returns through valid financial instruments, I find all of this to be bewildering.

GOPAL RATHNAM, Bengaluru

IPL final

Chennai Super Kings deserves our heartiest

congratulations for winning the 11th edition of the IPL. The team’s remarkable comeback marks the glorious culmination of a month-long stellar and all-round performance (‘Sport’ page - “Super Kings Make it a fairytale return”, May 28). The fitting finale lived up to its reputation of being a visual treat. The splendid victory can be attributed to team spirit, a cohesiveness and an indomitable will to succeed in all departments of the game under the astute captaincy of captain cool,

M.S. Dhoni. The highlight of Team CSK’s journey has been its ability to turn hopeless situations into match-winning ones. Shane Watson’s explosive batting scripted the memorable victory. One also has to mention the guidance, motivation and apt team combinations by coach Stephen Fleming. Overall, the sportsmanship and bonhomie exhibited by all teams was commendable.

B. SURESH KUMAR, Coimbatore

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CORRECTIONS & CLARIFICATIONS:

In “The Hindu on Sunday Weekend Challenge” (an in-house advertisement, May 27, 2018), the potential answers to the question “Which musician won accolades for a performance during the wedding of Prince Harry and Meghan Markle?” were erroneously given as: a) Swat Valley; b) Murree; c) Peshawar; and d) Quetta. They should have been : a) Sheku Kanneh-Mason; b) Adele; c) Ed Sheeran and d) Elton John.

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