



Confusing consent

The Farooqui verdict risks widening the notion of 'consent' as a defence in rape cases

In acquitting writer-film-maker Mahmood Farooqui of the charge of rape, the Delhi High Court concluded that it could not be established without reasonable doubt whether the incident took place. The rationale of arriving at such a conclusion may be debatable, but it is the court's reasoning on the issue of consent that is unsettling. It ruled that even if rape had taken place, it is doubtful that it was without the consent of the American researcher who pressed the charges. The court, by and large, accepted her version of events, described her as a stellar witness, and found that vital aspects of her testimony were corroborated. It rejected doubts raised by the defence based on her behaviour after the incident, saying she was only manifesting signs of post-rape trauma and disorientation. At the same time, in saying that the victim's unwillingness was only in her mind, the judge gave credence to Farooqui's defence that he was unaware of the lack of consent. When the court raises a doubt as to when exactly the consent was withdrawn, it seems the victim is being faulted for the man failing to comprehend a 'no'. Requiring a victim to prove that her refusal had been understood by the person who assaulted her is an unreasonable burden. It may aid the use of consent as a defence against a rape charge. Consent, a major ground for defence in rape cases, was allowed to be raised in the appeal although it was not made during the trial, which resulted in the conviction and imprisonment.

The Delhi High Court's verdict may be largely free of the kind of platitudinous moralising that finds its way into judgments in such cases. But it can be held to account for casual phrasing, which makes it hard to distinguish between its own views and those of the defendant's counsel in some places. Also for unnecessary and indefensible remarks such as the one about "feeble hesitation", which it said does not amount to a positive negation of advances. Earlier this month, an order of the Punjab and Haryana High Court suspending the 20-year prison term imposed on students of a private university for gang-rape, and granting bail to them, was notable for its sweeping comments blaming the "degenerative mindset" of youth for the offence. In effect, it sought to shame the victim as one given to casual relationships and adventurism. Judicial decisions containing a mix of sound law and regressive personal opinion are not uncommon. Some blame victims of rape or insinuate that they had brought shame on themselves and their families. When superior court orders contain such remarks, there is an inherent danger that they could be seen as a legal basis for deciding cases of rape. These cases, like any other, must be decided on evidence, and courts should avoid tangential theorising.

Repeat and repent

A second failure by Republicans to replace 'Obamacare' exposes incoherence in the party

A second concerted push by Republicans in the U.S. Congress to "repeal and replace" the landmark health-care reform law passed by the Obama administration ended in tears when it failed to garner the minimum 50 votes necessary to pass on the floor of the Senate. The latest proposal, which came to be known as the Graham-Cassidy bill after the Senators who sponsored it, was built on the idea, contra-Obamacare, that each U.S. State could effectively write up its own provisions for implementing certain aspects of healthcare policy. And in return for ensuring that some basic tenets were followed, such as patients with pre-existing conditions not being excluded from health insurance schemes, they would be given sizeable block grants. These grants, effectively "sweeteners" for moderate Republicans nervous about the mid-term elections due in November 2018, were supplemented with the promise of further deregulation of the health-care sector, a giveaway to the more conservative Republican fold. Ultimately neither of these measures worked as intended. Two Republican Party stalwarts, Senators John McCain and Susan Collins, reprised their oppositional role to the effort in July 2017, when the first attempt to repeal and replace Obamacare fell short of the 50-vote mark. Along with libertarian Senator Rand Paul, their resistance was sufficient to sink the bill's prospects.

The failure to repeal and replace the Affordable Care Act (ACA) represents more than just cracks within the Republican superstructure. It shows that notwithstanding the stunning victory of Donald Trump last November, the party is still beset with conflicting imperatives and has not united under his leadership as President. Factors exacerbating the malaise include the pressure on Senators facing contests in the mid-term elections, where they will have to explain to voters why seven years of anti-Obamacare sloganeering has amounted to nothing. They will further have to find some way to sell the embarrassing, dismal reality that influential Republicans such as Mr. McCain are opposed to the Graham-Cassidy bill as long as they don't know "how much it will cost, how it will effect [sic] insurance premiums, and how many people will be helped or hurt by it." A second source of anxiety for Republicans is that the political goodwill they enjoy today hinges ever more on success in a second area of policy reform: a complex overhaul of the tax code. Mr. Trump is poised to announce a major tax cut, going by his tweets; yet will that suffice to unite his squabbling party colleagues around a single conservative banner? The heart of the problem for the Republicans is that the ACA is a powerful institutional recalibration that transferred a measure of control over health-care outcomes from health insurance corporations to patients, not to mention potentially expanding coverage to 30 million uninsured Americans. Whatever the Republicans hope to replace such a patient-centric policy with had better be deeply thought through and masterfully sold to their constituents.

The unilateral vote

A rush to hold referendums, from Kurdistan to Catalonia, highlights the importance for nuance in such votes



SRINIVASAN RAMANI

Referendums are in the news, with tensions mounting in Spain and West Asia over regional votes in Catalonia and Iraqi Kurdistan, respectively. Both in their own ways are a caution on how such instruments of direct democracy need to be used with care.

A referendum is, no doubt, a powerful tool to deepen participation and reflect public opinion in a democracy. But when, how and for what reasons referendums should be held need to be carefully laid out so as to ensure their legitimacy. As the Brexit referendum proved last year, these instruments can reduce layered issues such as the membership of a single market into a vote on the narrower subject of immigration. When referendums are used as blunt instruments to decide upon complicated issues such as independence or secession, there needs to be an additional stress on mechanisms: questions framed for the vote, legitimacy of the institution calling for the vote and so on.

Question of cooperation

Some of the well-known referendums on independence that were held in recent years include the ones in Scotland in 2014, South Sudan in 2011 and Quebec (Canada) in 1995. The first two were outcomes of agreements with the Central governments in the U.K. and Sudan, respectively. The Quebec vote was the outcome of a provincial decision, which however resulted in failure for secessionists. The two referendums in Iraq's only autonomous region, of Kurdistan (held on September 25) and in the Catalonia autonomous province in Spain (to be held on October 1) follow the Quebec model – without the stamp of approval or an agree-



GETTY IMAGES/ISTOCKPHOTO

ment with national government in Iraq and Spain, respectively.

The question of legitimacy of referendums is important and it is automatically provided if the Centre concedes this mechanism on such issues. Central acquiescence to the process of a referendum to decide or infer opinions on sovereignty also allows for a true campaign on both sides of the yes/no positions in the referendum. This is not the case with the Catalan and the Kurdish referendums, which means that a "yes" outcome would not necessarily push the envelope in the direction of secession in a peaceful manner.

Legitimacy apart, on the face of it, there is a common thread in these two referendums. The rulers of Iraqi Kurdistan sought the non-binding referendum as a step towards independence from "Arab" Iraq. The dominant parties in Catalonia also have a similar aim – framing the binding yes/no vote for independence as a decisive step towards the formation of a new republic, independent of Madrid. But the similarities end there – in the tactics used by these pro-secession forces from the nation-states of Iraq and Spain.

The Kurdish case

Iraqi Kurdistan is just one of four Kurd majority areas, the other three being in Syria, Turkey and Iran. Kurds were denied a homeland of their own after the break-up of the Ottoman Empire and various movements seeking autonomy and

independence in the four countries have been brutally repressed over the years.

In Iraq, Kurds were repressed during Ba'ath rule. After the U.S.-led invasion of Iraq, they managed to get a better deal in the new regime and enhanced their autonomy following Baghdad's entanglement in the civil war against the Islamic State (IS).

Kurds are an important partner for Baghdad in the fight against the IS, with the U.S. also treating the Peshmerga forces as an ally. With a weakened Baghdad dependent upon Shiite militias and Iran's proxy forces in the long civil war, Kurds have used the situation to enhance the territory under their control.

The move by the Iraqi Kurds towards independence is being viewed with alarm by the Turkish and Iranian regimes. Turkey has in the past treated Kurdish demands for minority rights such as recognition of their language, let alone autonomy, as secessionist. Following concessions towards minority rights in the early 2000s under the AKP regime of Recep Tayyip Erdoğan, a long-running battle against insurgents led by forces such as the Kurdistan Workers' Party (PKK) eased, but hostilities were renewed recently by the Erdoğan-led regime.

Iran is also fighting a minor insurgency in the mountains of its northern region led by another affiliate of the PKK, the Kurdistan Free Life Party (PJAK) and has re-

cently closed its eastern borders in the light of the referendum held in Iraqi Kurdistan.

In short, any moves for independence of "south Kurdistan" in Iraq have geopolitical ramifications and are severely opposed by Turkey and Iran in particular, as well as the Bashar al-Assad regime in Syria, which remains tactically silent on the matter for now. The referendum in Iraq cannot be seen in isolation from the other battles which are being fought by Kurds in neighbouring countries and which could complicate matters such as the still unfinished civil war against the IS in Syria and Iraq, regardless of how legitimate the historical claims of the Kurds for a separate homeland are.

The view from Barcelona

Catalonia's referendum does not suffer from these complications. Catalans were also subject to similar centralisation and unitary principles during Franco's rule in Spain as Kurds were in Turkey, being unable to speak their language in public. But this was a fate suffered by other minorities in Spain as well, the Basques for example.

Unlike the Basque region where movements for decentralisation, autonomy and even independence took a violent turn with a raging insurgency led by the Euskadi Ta Askatasuna (ETA), the Catalan demands were through the democratic route. This gained significance in the post-Franco transformation of Spain, with a degree of autonomy guaranteed to its many nationalities such as the Basque region, Galicia and Catalonia apart from other autonomous communities in a process of devolution regulated by the Spanish Constitution of 1978.

While the recognition of "nationalities" such as the Catalan one in Spain has decisively moved the country away from the centralised and unitary nation-state under Franco, there have been demands for a truer federalisation and greater devolution of power, especially in Catalonia lately. This

has expressed itself as a movement for independence in the past decade as an array of political parties from the Left to the Right have asked for a separate nation-state due to the distinctiveness of the Catalan identity and notions of economic injustice. Secessionists point out that while Catalonia is the richest province, it gives more to Spain than it gets from the government in Madrid.

The real reasons for the demands of independence lie in the vagaries of Spain's economy which have affected Catalonia as well. Catalan nationalists from both the Left and the Right have used independence as the way to answer raging problems such as unemployment instead of pursuing reforms and measures that will relieve Catalonia (and indeed Spain) of these issues.

The October 1 referendum itself is problematic – it asks participants if they prefer independence through a yes/no vote and choices such as greater federalisation are not provided on the ballot. In any case, parties supporting the "no" option (and endorsed mostly by non-Catalan long-time residents of the region) are boycotting the referendum. Yet, the Catalan government is pushing the referendum as a binding step towards independence.

Different strokes

In sum, the issues at stake in Iraqi Kurdistan and Catalonia in Spain are vastly different. Kurdish claims of independence might be legitimate due to the repression faced by Kurds in their respective sovereignties and the parcelling of the Kurdish homeland into regions across those sovereignties. But a push for independence in this milieu is fraught with new tensions rising out of geopolitics. The Catalan case for independence is lesser as the real problem in Catalonia is related to economic issues, which are shared by the rest of Spain as well.

srinivasan.vr@thehindu.co.in

Falling off the health-care radar

Care for the elderly needs to be better targeted by the health system and social networks



VANI S. KULKARNI & RAGHAV GAIHA

The National Health Policy (NHP), 2017 is unable to see the wood for the trees. Life and death questions are dealt with perfunctorily or simply overlooked. For example, it overlooks the rapid rise in the share of the old (60 years or more), and associated morbidities, especially sharply rising non-communicable diseases (NCDs) and disabilities. With rising age, numerous physiological changes occur and the risk of chronic diseases rises. The co-occurrence of chronic diseases and disability elevates the risk of mortality.

Another, more recent report, "Caring for Our Elders: Early Responses, India Ageing Report - 2017 (UNFPA)", complements the NHP by focussing on the vulnerability of the aged to NCDs, recent policy initiatives and the role of non-governmental organisations in building self-help groups and other community networks. While all this is valuable, it fails to make a distinction between the aged in general and those suffering from chronic conditions. It matters as

many suffering from chronic conditions and disabilities may find it harder to participate in such networks. Nor are the important questions of the impact of these networks and their replicability discussed except in a piece-meal manner.

The health system is ill-equipped to deal with surging NCDs; nor is the staff well trained to treat/advise the aged suffering from dementia or frailty, and for early diagnosis and management of conditions such as hypertension. The quality of medical care is abysmal, and hospitalisation costs are exorbitant and impoverishing. Health insurance covers a fraction of medical expenses incurred. However, many of these chronic conditions such as hypertension can be prevented or delayed by engaging in healthy behaviours. Supportive families and community networks often make a significant difference.

Based on the India Human Development Survey (IHDS) 2015, among aged males and females (over 60 years), the proportions of those suffering from NCDs nearly doubled during 2005-12, accounting for about a third of the respective populations in 2012. More females than males suffered from these diseases. The proportions were higher among those over 70, and these doubled in the age groups 60-70 years and over 70.

A vast majority of those with



GETTY IMAGES/ISTOCKPHOTO

NCDs had access to medical advice and treatment and the proportion remained unchanged during 2005-12. As there is considerable heterogeneity in providers of medical help – from qualified doctors to faith healers and quacks – and a sharp deterioration in the quality of medical services, it is not surprising that the proportions suffering from NCDs have shot up despite high access. Access to government health insurance nearly doubled but remained low as barriers for the aged remain pervasive. In any case, the proportion of medical expenses covered was meagre.

Loneliness and immunity

Loneliness is a perceived isolation that manifests in the distressing feeling that accompanies discrepancies between one's desired and actual social relationships. The link between loneliness and mortality is mediated by unhealthy be-

haviours and morbidity. Research shows that loneliness increases vascular resistance and diminishes immunity.

Whether related to or unrelated to loneliness, a high risk factor for NCDs is daily consumption of alcohol, especially local brews. Daily consumption of alcohol among the aged with NCDs rose more than twice over the period 2005-2012.

Networking as support

Another measure is the proportion of those married and widowed. However, children often play an important role in elderly support with the caveat that filial piety shows signs of diminishing. An important point is that today, "women are increasingly filling other roles, which provides them with greater security in older age. But these shifts also limit the capacity of women and families to provide care for older people who need it".

That social networks are effective in providing support to the aged is far from axiomatic as there are questions of size of a network, whether it is proximal or non-proximal and whether there is social harmony. If social networks are instrumental in bonding together in periods of personal crises, this could compensate for a lack of family support, e.g. widows living alone, and help alleviate morbidity.

The IHDS also provides data on inter-caste and village conflicts,

with the proportion of those suffering from NCDs living in villages that experienced inter-caste or other conflicts more than doubling during 2005-2012. Lack of social harmony induces helplessness, disruption of medical supplies and network support.

The World Report on Ageing and Health 2015 (WHO) is emphatic about what is known as ageing in place, that is the ability of older people to live in their own home and community safely, independently, and comfortably, regardless of age, income or level of intrinsic capacity. This reinforces the case that solutions to those with chronic diseases lie within but also outside health systems.

From a policy perspective, health systems have to be configured to deal with not one NCD but multiple NCDs to manage them better. The impact of multi-morbidity on an old person's capacity, health-care utilisation and the costs of care are significantly larger than the summed effects of each. Besides, the reconfigured medical system must be complemented by stronger family ties and social networks. This is not as Utopian as it may seem as examples of such complementarities abound.

Vani S. Kulkarni is a Lecturer in Sociology, University of Pennsylvania, U.S.; Raghav Gaiha is (Hon.) Professorial Research Fellow, Global Development Institute, University of Manchester, U.K.

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.

Economic band-aid

That the government has taken steps to reconstitute the Economic Advisory Council is perhaps a recognition of the fact that over-confidence and arrogance do not pay. This has presumably taken place now because of the economic headwinds the government currently faces. With two-thirds of this government's tenure already over, the remainder is bound to be spent in preparing for the general election. Thus there will be no time for the government to improve the lot of the nation except coin more hollow slogans as promised just before the last parliamentary election.

S.K. KHOSLA, Chandigarh

Afghan policy

India's clear stand that it

will not send troops to Afghanistan shows that Indian foreign policy cannot be hijacked by any power ("All help, but no troops in Afghanistan", September 27). We have already experienced the aftershocks of such an experiment during the conflict in Sri Lanka. More than fighting an unknown enemy, what should be done is to take all steps to carry out constructive work in a war-torn country. Bilateral cooperation between India and the United States must be strengthened but not at the cost of "unfollowing" an independent foreign policy.

YOGESHWAR N. TOMPE, Degloor, Maharashtra

India has made a wise decision. The presence of an alien security force is something that will never be accepted by Afghans

irrespective of the intentions. Historically speaking, displacing an army in another country can be both ineffective and counterproductive as the Sri Lanka experience showed us. However, providing training to security forces will be a prudent move. Empowering Afghan forces to protect their democratic institutions will help heal the wounds. All help without any intrusion into another's sovereignty should be the goal.

MAYUKH DEVADAS, Kainiangalam, Thrissur, Kerala

Pursuing the enemy

While there is no denying the fact that India breached the LoC ceasefire agreement between India and Pakistan by conducting surgical strikes, this should be seen in the light of contemporary

causal factors, one of which was the brutal Uri attack ("Diary of a very long year", September 26). Had India remained silent after this, it would have sent out the wrong signal. If it turned out to be strategically important, it is a different matter altogether. We should not see the strikes as a futile exercise but rather as a necessary evil to respond to an evil. They should also be seen in the light of the changed stand of India as a soft power and asserting itself on the borders, be it Pakistan or later China.

YONARK BAJAJ, New Delhi

BHU's women students

The protest in Banaras Hindu University by women students highlighting the weak security infrastructure, and which

resulted in their harassment, is jarring. The development is not in line with the pledge taken by the newly elected U.P. government to prioritise women's safety. The issue of women's safety at educational institutions and in the workplace forms the bedrock of the commitment towards women's empowerment. BHU finds a place in our history as a symbol of India's advancement and this identity should not be diluted under any circumstances.

The problem arises when every such protest is seen from the political point of view. The protestors just wanted a probe into an issue of rights. Dealing with this in a high-handed way is completely unjustified.

APARAJITA SINGH, Lucknow

Thanks to weak and politicised university administrations, the police now have a free hand to act against students who are perceived to have "overstepped the limits" set by the authorities. Prime Minister Narendra Modi's efforts to make the "beti bachao beti padhao" campaign a success has taken a beating in his own parliamentary constituency, Varanasi. When Uttar Pradesh went to the polls, the buzzword was women's safety. Issuing lathicharge orders against unarmed women students is an abuse of power that is unpardonable and speaks volumes about the insensitivity of the State administration.

PADMINI RAGHAVENDRA, Secunderabad

MORE LETTERS ONLINE: www.hindu.com/opinion/letters/