



Layers of protection

Protecting honest public servants is important; so are anti-corruption efforts

The amendments to the Prevention of Corruption Act, 1988, adopted recently by both Houses of Parliament, are a mixed bag. Moves to make changes in this law, aimed at combating corruption in government, were initiated during the UPA's second term in office and largely centred on the misuse of one provision – Section 13 (1)(d). Former Prime Minister Manmohan Singh had criticised this section, under which public servants are culpable for securing a pecuniary advantage for another “without any public interest”, for ignoring a foundational principle of criminal law: *mens rea*. This resulted in many honest officials being prosecuted even when they gained nothing and merely exercised their power or discretion in favour of someone. Insofar as it had a chilling effect on governance and deterred bold decision-making, the amended form may have a liberating effect on honest officials. Besides, it is more concise and restricts criminal misconduct to two offences: misappropriating or converting to one's own use property entrusted to a public servant or is in his control, and amassing unexplained wealth. There was concern initially with the wording, “intentionally enriches himself illicitly during the period of his office”, as it raised a doubt whether the ‘intention’ to amass wealth would also have to be proved. Now an explanation has been added that a person “shall be presumed to have intentionally enriched himself” if he cannot account for his assets through known sources of income.

By making citizens liable for offering a bribe to a public servant, the anti-corruption law has been brought in line with the UN Convention Against Corruption. The only exception to this rule is when one is forced to give a bribe. This exception kicks in only when the fact that one was forced to pay a bribe is reported to a law enforcement authority within seven days. The penal provision can empower people by allowing them to cite it to refuse to pay a bribe. At the same time, what happens when the police or any other agency refuses to register a complaint? People may be left in the lurch with no redress. Further, it may render them vulnerable to threats from unscrupulous public servants who collect money to speed up public services but do not deliver. The most unacceptable change is the introduction of a prior approval norm to start an investigation. When a prior sanction requirement exists in law for prosecution, it is incomprehensible that the legislature should create another layer of protection in the initial stage of a probe. Public servants need to be protected against unfair prosecution, but a genuine drive against corruption needs a package of legislative measures. These should contain penal provisions, create an ombudsman in the form of a Lokpal or Lokayukta, as well as assure citizens of time-bound services and whistle-blower protection. Laws to fulfil these objectives are either not operational or are yet to materialise.

Now to compete

The ground has shifted since they agreed to merge, and Vodafone Idea has its task cut out

A week is a long time in politics. In business, especially one as rapidly evolving as mobile telecommunications, a year can be an eternity. So for the Vodafone Group's Indian unit and Idea Cellular Ltd., which had in March 2017 announced an agreement to merge, last week's approval of the proposed union by the Department of Telecommunications came not a day too soon. The changes in the industry landscape over the intervening 16 months have been dramatic. The market has contracted marginally in terms of overall subscriber numbers – from 1.17 billion on March 31, 2017, to 1.13 billion at the end of May this year. But the number of competing service providers is set to shrink from double digits to just three privately run large rivals plus state-owned BSNL and MTNL. This consolidation, from the wave of mergers and acquisitions over the last couple of years, was the gain the companies left standing were hoping for. From more wholesome slices of the customer pie to more bang for the buck in a highly capital-intensive business, the merged entities including Vodafone Idea Ltd. – as the new business will be called – ought to be happy with the way things have panned out. But the situation on the ground is far from ideal.

The intensity of competition has steadily increased since the entry of Reliance Jio, founded by the deep-pocketed billionaire Mukesh Ambani. This has left the incumbents battling furiously to protect their turf with tariff reductions to match the newcomer's ‘no prisoners’ approach to pricing of its voice and data services. The telecom regulator's September decision to more than halve the fee that operators pay on cross-network calls has only added to their woes, resulting in a steep and continuing erosion in average revenues per user and margins. The managements of Vodafone and Idea have repeatedly underscored the competitive challenges facing them, with both operators losing customers and the latter awash in red ink. With about 430 million subscribers, Vodafone Idea would vault past Bharti Airtel's current India customer base of about 345 million to the top of the heap. But this scale that they gain would ultimately count for little if the combine fails to staunch customer losses, and do that without compromising on the business's viability. The cost of bidding for fresh wireless spectrum is escalating steadily and mobile number portability has made it easier for customers to switch networks in case of dissatisfaction with service quality levels or pricing. The combine will therefore need more than just a few smart ‘ideas’, as Idea Cellular's erstwhile marketing campaign used to stress, to make a fist of their merger.

The umpire takes all

While the opposition and his coalition partners will keep Imran Khan in check, Pakistan's Army will call the shots



RAKESH SOOD

The elections in Pakistan have delivered the expected outcome – a victory for Imran Khan's party, Pakistan Tehreek-e-Insaf (PTI), though with slightly greater numbers than was perhaps anticipated. Twenty-two years after he entered politics, Mr. Khan's persistence has finally paid off as he gets ready to be sworn in as the new Prime Minister of Pakistan. However, he will remain dependent on coalition partners who will ensure that he keeps in line with what the umpire wants. Mr. Khan needs to understand that while on the cricket pitch, the winner is a playing team, in Pakistani politics, the Army is the umpire and calls the shots.

Managing the ‘hawa’

Every election is guided by a ‘hawa’ (a wave), and after so many elections, the Army has become adept at manipulating the ‘hawa’. In the 2002 elections, with Gen. Pervez Musharraf in charge, it was clear that neither the Pakistan Peoples Party (PPP) nor the Pakistan Muslim League-Nawaz, or PML(N), could be allowed to win (both were opposed to the military takeover in 1999). And so a new party, the Pakistan Muslim League (Q), or PML(Q), emerged to sweep the election. Incidentally, the PML(Q) has been reduced to 5 seats this time and will support Mr. Khan.

In the 2008 election, Benazir Bhutto's assassination (in December 2007) created a sympathy wave for the PPP but an accommodating President (and her husband) Asif Ali Zardari ensured that

the Army remained in control of key policy matters. Five years later, dissatisfaction with the PPP's mis-governance propelled Nawaz Sharif to victory and he was sworn in as Prime Minister for the third time. Ironically, even though Mr. Sharif's political career was nurtured under the benign gaze of Gen Zia-ul-Haq in the 1980s, his relations with the Army have invariably been strained every time he has been Prime Minister. The first time he became Prime Minister, in 1990, he ended up being dismissed by President Ghulam Ishaq Khan in 1993 over growing differences with Chief of Army Staff (COAS) Gen. Abdul Waheed Kakar; elected again in 1997, he was ousted in a coup by COAS Gen. Musharraf in 1999.

History repeated itself and this time too. His relations with the Army deteriorated from 2016 onwards with the ‘Dawn leaks’ about a meeting where the Army's flawed Afghan policy was held responsible for Pakistan's international isolation and worsening law and order situation at home. The Army was not amused and held the Prime Minister's office responsible for the embarrassing disclosure. The Panama Papers came in useful to begin an inquiry into Mr. Sharif's financial assets, eventually leading to a judgment on somewhat flimsy grounds, resulting in his resignation last year. A pliant judiciary further ensured his disqualification from politics, sentencing him to jail for 10 years (and his daughter and political heir Maryam Sharif to seven years), three weeks before the elections, making it clear that the PML(N) was out of favour.

A new king's party

With the PPP still in disarray, the stars were aligned for Mr. Khan in 2018 and this perception has catapulted his party from 28 seats in



2013 to 115 (in a house of 272). No doubt he was helped by the ‘*khalai makhloq*’ (extra-terrestrial beings) who engineered last-minute defections from the PML(N), but it contributed to the ‘*hawa*’ that has ensured his victory.

The 2018 election has contributed a new term, ‘electables’, to Pakistani election terminology. Used by Mr. Khan to describe those who have mastered ‘the science of winning elections, these are individuals who enjoy the loyalty of ‘*biradaris*’ in their constituencies (largely rural and semi-urban constituencies in Punjab) because of family ties and financial standing and have built an efficient patronage system. In 2002, they had abandoned the PML(N) and switched to the PML(Q), returning in 2008. This time, many joined the PTI while some chose to fight as independents rather than under the PML(N) banner. The reason was that the PTI was widely seen to be the king's party this time with Mr. Khan being described in Punjab as the new ‘*laadla*’. Contrary to most expectations, the religious parties have not fared well in terms of winning seats. Even though the Milli Muslim League – Lashkar-e-Taiba's chief Hafiz Saeed's political front – was not recognised by the Election Commission, it had fielded several candidates using the banner of the Allah-o-Akbar Tehreek, a little known entity founded in 2011. Another banned party, the Ahle Sunnat Wal Jamaat, led by Maula-

na Muhammad Ahmed Ludhianvi, and linked to the Lashkar-e-Jhangvi, had fielded over a hundred candidates under the banner of Rah-i-Haq.

A new Bareilvi front, the Tehreek-i-Labbaik Pakistan, led by Khadim Hussain Rizvi, has emerged in recent years. It came into prominence in 2016 with its protests against the execution of Mumtaz Qadri, assassin of Punjab Governor Salman Taseer. Hardline Islamic parties have traditionally belonged to the Deobandi school or associated with the Salafis. A hardline Bareilvi front is a new development but evidently failed to make much of a dent. However, these may have played the role of spoilers, something that will emerge once voting details become clearer.

A notable development is the near weakening of the Muttahida Qaumi Movement (MQM) in Sindh and the Awami National Party (ANP) in Khyber-Pakhtunkhwa (KP). The MQM's hold has been in the urban areas of Sindh which account for 24 out of 61 seats in the province. Factionalism, a leadership vacuum with the old guard in exile and Army operations to break its nexus with organised racketeering brought down the MQM from 19 to merely six seats this time. The PTI did surprisingly well, picking up 14 seats while the PPP retained its hold in rural Sindh. The secular ANP has seen its leadership targeted by the hardliners in recent years and was able to win just one seat in KP.

A difficult challenge

Despite the adverse ‘*hawa*’, the PML(N) has managed a respectable tally of 64 seats (down from 126 in 2013), 60 of which have come from its stronghold Punjab, which has 141 seats out of 272. Moreover, in the Punjab Provincial Assembly, out of 295 seats, the PML(N) has

lost its majority (in 2013, it had 239 seats compared to the PTI's 30) but remains the single largest party with 129 seats and the PTI a close second with 123 seats. This has put a question mark on government formation in Punjab. In Sindh, the PPP is well placed to form the government, while in KP, the PTI has been re-elected to power. Balochistan remains fragmented with the religious parties' grouping, the MMA (Muttahida Majlis-e-Amal), and the Balochistan Awami Party holding the key.

During his heyday as the cricket captain who won the World Cup in 1992, Imran Khan was known as persistent and autocratic but also able to motivate his team. His election victory shows that he remains an icon for the below-35 voter, reflecting the changing demographics of Pakistan. But charisma can fade quickly too.

In his politics, Mr. Khan has been erratic – vowing to fight corruption, seeking to embrace the Taliban, adopting a nationalist anti-U.S. stance, criticising the Army for its dealings with the U.S. while staying on its right side, cultivating a pious image together with a personal lifestyle that is in sharp contrast. Given that the Senate will remain in the hands of the PML(N) and the PPP at least for the next two years, he will face difficulties in terms of his legislative agenda. His dependence on coalition partners will force him to keep his autocratic tendencies under check. Meanwhile, Pakistan's policies towards its neighbours and major powers will continue to be crafted by the Army. Mr. Khan may well find that this time around, he is captain but only in name.

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Climb the escalator of reason

Our politicians and courts must avoid the language of retribution



YASH S. VIJAY

The Supreme Court's recent order on mob lynching adjudicates as well as educates on India's promise of secularism and the need for effective prevention in law and order. In his judgment, Chief Justice of India Dipak Misra condemns “a reactionary retributive attitude transforming itself into dehumanisation of human beings”. The court also reposes faith in the rule of law. But the court's criticism of its citizenry for dehumanising ‘the other’ may hold lessons for our political and judicial leadership too.

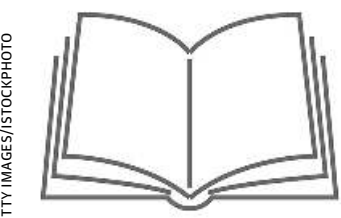
The judgment endorses the belief that “it is the fear of law that prevents crimes”. However, effective policing of mob violence may not be the only cause for failure. Political scientist Thomas Homer-Dixon notes that when one's perception of justice is combined with a lack of accountability, it creates ‘the other’ and allows for dehumanisation and violence. This dehumanisation is layered with deindividuation, or the inability to see the other beyond the wrong he

or she may have committed, and the use of pejorative caricatures to refer to the other. When viewed in such a framework, dehumanisation explains how India's expanding death penalty regime has moulded people's perception of justice.

Talk of the death penalty

The political class has shown increasing affinity for the death penalty. Earlier this month, Punjab Chief Minister Amarinder Singh suggested the death penalty for first-time drug offenders despite his earlier position that the death penalty is against basic human rights. The move betrays a lack of understanding of the complexity of drug dependence in individuals. Similarly, in 2016, the Nitish Kumar government in Bihar introduced the death penalty for illicit liquor trade without any evidence to suggest its efficacy. Earlier this year, BJP MP Subramanian Swamy moved, and then withdrew, a private member's Bill in the Rajya Sabha for death penalty for cow slaughter, an act already disproportionately punishable by life imprisonment in Gujarat.

More prominently, a Presidential ordinance was introduced by the Union government to impose the death penalty for the rape of girls under 12 years of age, in response to public dissatisfaction



against the political shielding of suspects in separate incidents of rape in Kathua (Jammu and Kashmir) and Unnao (Uttar Pradesh). In doing so, the government contradicted its own stance before the Supreme Court when earlier this year it submitted that the death penalty could not be the solution for everything. The elements of dehumanisation are writ large in these impulsive policy decisions and pronouncements. Our political class has opted too often in the recent past to declare certain categories of criminals worth eliminating. The constant introduction of the same method to deal with a wide range of policy challenges has created a ‘perception of justice’ that equates retribution with respect for victims.

Unfortunately, courts have often joined the chorus and actively sought and encouraged harsher punishments. This January, for instance, the Uttarakhand High Court recommended that the State introduce the death penalty for

cases of child rape. The courts have in the recent past showcased language with helpless frustration. ‘Monstrous’, ‘bestial’, ‘diabolical’ and ‘unfathomable’ have been used to refer to offenders. This language is then read with approval across television studios in India, feeding the public with an idea of the other against whom violence is the only means of justice. Judicially expressed disgust does not aid in understanding crime, or preventing its recurrence.

Even for crimes as heinous as child rape which require serious policy interventions, neither the court nor the Union government has defended the punishment of death beyond the simplistic ‘fear of the law’. The introduction of death penalty for non-homicidal crimes, unchecked by the court, inspires the state to enter into an unhealthy competition of symbolism, at the cost of regressing notions of justice in the public.

The 2013 Justice Verma Committee's restraint in not recommending the death penalty for rape, and the Law Commission's recommendation to restrict the death penalty only to crimes against the state have been forgotten in this impassioned discourse. Dehumanisation is the outcome when the court calls upon the ‘collective conscience’ to justify the death penalty. As the court in-

creases its reliance on retribution, societal standards and definitions of justice also change, making the demand of the collective a self-fulfilling prophecy.

Demonstrable rationality

Justice Bhagwati, the lone dissenter in the Bachan Singh case (1980), which upheld the constitutionality of the death penalty, opined that the right to life could not tolerate an infringement without demonstrable rationality. Rationality seems to suffer at the hands of retribution. Eradicating the evil-doer provides seductive comfort to the mob and the state. The court must resist being the avenger for society in favour of nurturing a culture where justice and retribution are not the same.

The cognitive psychologist, Steven Pinker, identifies ‘the escalator of reason’ as a historical force, which has helped reduce violence in societies. For India's criminal justice system to climb the escalator of reason, our political and judicial leadership need to create and preserve a culture of the dispassionate study of the human costs and benefits of retribution, no matter how serious the shock to our conscience.

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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.

Temple entry

The article, “The Sabarimala singularity” (Editorial page, July 26), spells out the details of an “essential religious practice” under the Constitution and makes an arguable case that such a practice should subscribe to the ideals enshrined in the Constitution in order to be held valid and non-discriminatory. Without taking anything away from the merits of this theory, one wonders at the same time whether there is no life outside of the Constitution. Undoubtedly, the Constitution of any country is its basic charter, but we must also keep in mind that it is perhaps not the exclusive fount of all rights. A religious practice, custom or usage is viewed by many as a part of their lives and it could well be argued that it is as much their right to

ensure that the Constitution protects it, not eradicate it. The final court of the country will of course consider all aspects of the matter, presented with learning by both the sides, in a wholesome and comprehensive manner. One may not be unjustified in expecting the final court to enter appropriate caveats to draw with precision the boundaries of constitutionalism in matters of religious faith and belief, just as it would seek to protect fundamental rights, and ensure that the apprehensions of those who respect long-standing practice, custom and usage in religious matters (whatever be the religion) that the future may see many more such intrusions – even where no constitutional principle is involved – are allayed.

R.V. EASWAR,
New Delhi

I am sure that the Constitution has been kept egalitarian enough by its wise framers to admit a view about customs. Or else they could have expressly prohibited such practices. All that the top court needs to ask itself now is if it would not be improper and unwise on its part to strike down a practice and risk offending the feelings of crores of devotees on the strength of such a Constitution and on the basis of the feebleness and frivolity associated with some of the legal arguments put forth. There is no doubt that millions of devotees are sure to vote in favour of retaining the temple's existing practices.

S. JAGATHSIMHAN NAIR,
Thiruvananthapuram

The issue involves conflicting rights – the right to religion versus the right to equality. Perhaps the demand for equal treatment

would amount to a violation of the temple's right to manage its affairs. I personally feel that it is not right to see every issue through the lens of the Constitution.

M.V.R. NAGALAKSHMI,
Hyderabad

After the spate

The Cauvery is in spate – which *The Hindu* has covered vividly, both textually and pictorially (“A river regains its mojo”, and ‘Framed’ page – “Chasing the Cauvery”, both July 29). But the question that arises is this: what has the government of Tamil Nadu done to store the water? The only achievement appears to be agitations and periodic protests to seek the release of water from Karnataka. The least that could have been done is desilting and deepening of water bodies.

S. NADARAJAN,
Puducherry

Big cat habitat

It is heartening that the tiger population is on the rise despite there being immense pressure on habitat areas, with existing carrying capacity getting depleted due to the invasion of exotic weeds such as lantana, eupatorium, parthenium that are cutting off fodder for prey animals, and, finally, instances of fires/human-animal conflicts. Wildlife management needs to be reorganised so that there is a focus on habitat management (‘Ground Zero’ page, “Counting the tiger”, July 21).

B.M.T. RAJEEV,
Bengaluru

CORRECTIONS & CLARIFICATIONS:

In the box that was carried along with the story “Around the world in 86 hops” (*The Hindu* Magazine, July 29, 2018), the second last item – “Mahi was World Champion in 2001 (and it) Flew a record-breaking solo around the world in 2004” – is inaccurate. Mahi is the name of this particular craft, VT-NBF. Those flights were made by the same model of aircraft, the *Sinus 912 by Pipistrel*.

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