

Re-examine the Bill

Concerns about the triple talaq Bill must not be dismissed as an attempt to sabotage it

The winter session of Parliament saw more political positioning than appraisal of a legislation to make instant triple talaq a criminal offence. With the Muslim Women (Protection of Rights on Marriage) Bill pending in the Rajya Sabha, the best option would be to refer it to a select committee to help bring about a consensus on how to address the problem of talaq-ebiddat, as there is no serious opposition to the principle that it is morally abhorrent and legally impermissible. The core question is whether resorting to an illegal and arbitrary form of divorce should necessarily lead to a prison term for the offending husband. A three-year prison term, besides a fine, also raises the issue of proportionality. The Opposition has raised three concerns: whether a civil wrong, mainly a breach of a marriage contract in an arbitrary manner, ought to be treated as a crime; whether it is not a contradiction of sorts for the law to jail a husband for pronouncing instant talaq and also mandate that he pay a subsistence allowance to the wife; and whether making it a cognizable and non-bailable offence would lead to it being misused against Muslim men. Further, some see an internal contradiction in the way the law is sought to be framed. On the one hand it says instant triple talaq in any form is void, thereby declaring that the marriage continues to subsist; but it also talks of issues such as the custody of children and maintenance, which would arise only after a divorce. These are valid concerns and cannot be dismissed by the BJP as arguments aimed to sabotage the Bill.

The Bill is now in the Rajya Sabha, where the BJP and its allies do not have a majority. Some of its key allies, such as the AIADMK, the Telugu Desam Party and the Biju Janata Dal, are against the penal provision. The Congress, the main Opposition party, let the Bill sail through in the Lok Sabha, but has taken the position that referring it to a parliamentary committee may help remove some lacunae. Initially the party appeared to question the prescription of a jail term, but it has raised a new question. It wants to know whether the government would take care of the sustenance of the woman concerned if her husband is jailed for uttering triple talaq. The dilemma before the Congress is that it cannot be seen as reprising the role it had played over 30 years ago in the Shah Bano episode, when it brought in legislation to scupper a Supreme Court verdict in favour of a Muslim woman's claim for maintenance. However, hasty legislation passed in the commotion of a divided House may not help the cause. A sound legal framework to deal with all issues arising from instant talaq ought to be crafted after deeper consideration.

Evidence of fragility

Underwhelming growth estimates come amid worrying data on agriculture

live months after Chief Economic Adviser Arvind **⋠** Subramanian predicted that economic growth year, the Central Statistics Office has forecast that the gross domestic product (GDP) would expand at precisely that pace in the 12 months ending in March. The headwinds that had been flagged by Mr. Subramanian at that time are proving to be the crucial factors dampening momentum. For one, gross value added, or GVA which excludes taxes that feature in the GDP number - is projected to grow by 6.1%, slowing from a provisional 6.6% in 2016-17, as manufacturing and the agriculture, forestry and fishing components of GVA decelerate. Second, the key investment metric of gross fixed capital formation, though estimated to show faster growth, is expected to shrink in terms of proportion to GDP: to 29%, from 29.5% in the provisional estimates for 2016-17 and 30.9% in 2015-16. With the Index of Industrial Production (IIP) data released in mid-December also reflecting a sharp slowdown over the sevenmonth period from April to October, there are signs that the rebound seen in the second quarter may be far more vulnerable to unravelling than previously considered. With agriculture struggling for traction, despite a 'normal' monsoon, the prospect of private final consumption expenditure regaining vigour in a hurry seems remote, especially since rural households make a sizeable contribution to aggregate demand. The forecast for consumption spending posit both a slowdown in growth to 6.3% in 2017-18, from 8.7% a year earlier, and a marginal contraction in share of GDP.

That softer growth estimates have come at a time when the government's fiscal deficit has already crossed the budget estimate for the full year, and GST collections are underwhelming, is a particular cause for concern. With Brent crude hovering around \$67 a barrel, oil prices are now well above the \$60-65 range that the Economic Survey had flagged as having the potential to undermine both consumption and public and private investment. Data on kharif foodgrain production used by the CSO in computing GVA in agriculture, while provisional, project an almost 3% drop in output in 2017-18. This raises the possibility of stronger inflationary pressures on food prices in the coming months. With consumer price inflation having accelerated in November to 4.88%, the fastest pace in 15 months, monetary authorities at the Reserve Bank of India will have little to no leeway to mull interest rate reductions to support growth. On their part, policymakers must bank on building on the measures taken to unclog the credit pipelines, including the recent steps to recapitalise state-owned lenders. Other initiatives must include moves to re-energise the export sector: there may be no better time to make the most of the 'fair winds' of a strong global economic rebound that are blowing.

Yet another tectonic shift?

Rajinikanth's plunge into politics is well considered, and could transform Tamil Nadu's electoral landscape



S. GURUMURTHY

The decision of Tamil superstar Rajinikanth to try his hand at politics has added a totally new dimension to the Tamil Nadu political theatre, which has been in turmoil for more than a year now. Except for a hiccup in 1988-90, Tamil Nadu politics has never been in such tumult and uncertainty since the demise of Jayalalithaa in end 2016. Mr. Rajinikanth's decision to wear the political hat appears to be well thought out, as the State seems to be poised for yet another tectonic shift in its political history. A recall of how such shifts in Tamil Nadu politics in the past have changed the political landscape of the State may help one make an intelligent guess about the likely impact of yet another shift.

In the past

Politics in Tamil Nadu had experienced three major tectonic shifts since the advent of democratic polity. The first one fully Dravidianised the State's politics and the next two partly de-Dravidianised it. The first shift was the ouster of the national party, the Congress, from power in 1967, and forever thereafter. The next was the expulsion of the redoubtable M.G. Ramachandran (MGR) from the Dravida Munnetra Kazhagam (DMK) in 1972 and the emergence of the All India Anna Dravida Munnetra Kazhagam (AIADMK) as the main challenger to the DMK, reducing Tamil Nadu politics to just a play between two Dravidian cousins thereafter. This historic Dindi-



gul Lok Sabha by-election in 1973, which the newly formed AIADMK won, signalled the transfer of anti-DMK votes to the AIADMK as MGR was seen as more capable of defeating the DMK. The AIADMK relegated the Congress led by the towering K. Kamaraj and the DMK led by the mighty M. Karunanidhi to the second and third spots, respectively. Since then, the anti-DMK voters have been unwaveringly loyal to the AIADMK, except perhaps only once in 1996.

The third shift was the split in the AIADMK following MGR's death and the advent of Jayalalithaa, who rejuvenated the party as more powerful than before. While the first shift in 1967 drove Tamil Nadu into Dravidian exclusivism, the second and the third diluted the Dravidian content of the State polity, by forcing the AIADMK and DMK to align with national parties. Slowly, the national-minded voters increasingly turned to the AIADMK, seeing it as less exclusivist Dravidian in its impulses, further shrinking the space for national parties in the State.

Vacuum and uncertainty

But, recently, the sudden demise of Jayalalithaa and the equally abrupt retreat of Mr. Karunanidhi from politics forced by age – both

- have completely changed the settled assumptions and accepted grammar of the State's politics. An unprecedented leadership vacuum has enveloped the two parties and Tamil Nadu and led to an uncertainty, never faced, surrounding the State's politics. And, more recently, the shocking win of sidelined AIADMK leader T.T.V. Dhinakaran and the amazing defeat of the DMK, which forfeited its deposit, in the recent R.K. Nagar byelection have deepened the uncertainty, indicating that the solution to the uncertainty may not come from either of the two Dravidian parties at all. This has put the DMK on the back foot. When Jayalalithaa passed away, the DMK had assumed that it would return to power if the Edappadi K. Palaniswami government fell. It even began working with Mr. Dhinakaran to pull it down. But the reverse in R.K. Nagar seems to have compelled the DMK to review its strategy to force early elections, which it may not want so early now.

Rajinikanth's advantages Clearly, the monolithic Dravidian

politics, which dominated the State for 50 years, is defreezing, perhaps even melting down. This is the context for Mr. Rajinikanth's plunge. He has said he would form his party and fight the next As-

sembly polls, whenever it was held. But, with that eventuality nowhere near, Mr. Rajinikanth seems to have bought for himself enough time to organise his party, shape its philosophy and policies before launching it. The way he has handled the major announcement and managed the excitement it has generated, and now consolidating his fan clubs with the use of technology, indicates that he seems to have been well advised not to rush in, but instead gather his forces for what he first called as the war that lav ahead. The announcement of the virtual entry far ahead of the actual one seems to make strategic sense. He has undoubtedly taken advantage of the uncertainty in the State's politics by registering himself with its people as the new force strongly in the reckoning in the next elections.

Of the many factors that may go in his favour, the anti-DMK voters who have been loyal to the AIADMK may shift to him as now he, and not the AIADMK, may be seen as the one who can do it. Also, the anti-AIADMK votes, of which the DMK has been the main beneficiary. may shift to him. Another factor that may favour him is the entry of more than 37 lakh new voters crossing 18 by the 2019 Lok Sabha polls, and a further 23 lakh by 2021 on the electoral rolls of Tamil Nadu. With the two Dravidian parties not as attractive to the youth as before – the DMK leader M.K. Stalin himself has lamented that politics does not attract the youth - it is logical for Mr. Rajinikanth to position himself as the new face.

Puritans will argue that Mr. Rajinikanth's entry will promote a personality cult that undermines merit and principles in politics. While no one can say that a personality cult is good, equally, no one will

disagree that dynastic politics is worse as it is a personality cult by inheritance as in the example of Indira Gandhi passing on the baton to Rajiv Gandhi to Sonia Gandhi to Rahul Gandhi now. Given the experience of the DMK, Mr. Rajinikanth should know that if he avoids the dynastic shadow over his politics, his family will be his personal asset; otherwise, it will become a political liability.

Making a connect

Significantly, his entry has not met with any major opposition though some fringe groups have questioned his being an 'outsider' in terms of his roots. The apparent Tamil chauvinistic impulses of the Dravidian movement did not inhibit MGR, a Malayali, from winning and ruling Tamil Nadu, nor did that undermine Jayalalithaa's domination in the State. The inclusive cultural DNA of Tamil Nadu, which the chauvinist image of Tamil Nadu masks, is bound to accommodate Mr. Rajinikanth as well. More importantly, most new political parties in Tamil Nadu have connected themselves to Dravidian ancestry. But Mr. Rajinikanth's branding of his politics as 'spiritual" too seems a wellthought-out idea to distinguish and distance himself from the anti-god moorings of the politics of the State where people are becoming increasingly religious.

In sum, Mr. Rajinikanth's political advent has the potential to erode the stagnating and fatiguing DMK and AIADMK and sweep away the smaller local parties. With profound changes in the offing, interesting days lie ahead.

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Standing up for human rights

India must hasten to bring in an anti-torture law



ASHWANI KUMAR

n his new year message, UN Secretary-General António Gu-Lterres referred to the pervasive and large-scale infraction of human rights across the world as a global challenge that defies our vision of a humane and just world relevant for us. This is because the torture of individuals in state custody remains a brazen human rights abuse that mocks our governance even as we claim human dignity as the end objective of the Indian state, with the Supreme Court affirming it as "an intrinsic value, constitutionally protected in itself" (Puttaswamy, 2017, M. Nagaraj, 2006).

Cause for concern

As we move into the new year with hope in the future, we must pause to reflect on whether in our approach towards eliminating torture as an affront to human dignitv. we have been caught between legislative lassitude and judicial abdication. I do confess to a disappointment while propounding the necessity of a purposive and comprehensive anti-torture legislation through a public interest litigation. The necessity to move the highest

court arose because even years after India became a signatory to the Convention Against Torture in 1997, we have not been able to ratify it or have in place a domestic legislation to effectuate the right to life with dignity read into Article 21 of the Constitution. In a departure from judicial precedents established in Vishakha (1997), D.K. Basu (1997), Vineet Narain (1997), Association for Democratic Reforms (2002), Swami Achyutanand Tirth (2016) and the *Triple Talaq* (2017) case, the Supreme Court refrained nudge function to prompt the government into bringing the necessary anti-torture law. Acts of custodial torture continue to defy constitutional diktat and mock the Supreme Court's declaration of torture as "...synonymous with the darker side of human civilization, is a naked violation of human dignity..." (D.K. Basu, 1997). The recent Constitution Bench judgment in Puttaswamy (Supra), citing its earlier judgments, reaffirmed that torture infringes on human dignity which is "inalienable and inseparable from human existence".

Baffling stand

The court's disinclination to exercise its expansive review jurisdiction for enforcing the non-negotiable right to dignity in the face of legislative and government inaction is inexplicable given the court's activism as sentinel on the

qui vive qua enforcement of constitutional rights. And this despite the 2010 recommendation of the

Select Committee of the Rajya Sabman Rights Commission, the Law Commission of India and repeated assurances given on behalf of the Indian government at the UN Universal Periodic Review. The court remained impervious to its own jurisprudence expounded in Puttaswamy and NALSA (2014), among others, that unless there is a manifest intent expressed to the contrary, domestic laws should be aligned with the international legal regime on the subject. Those facing criminal trials and extradition proceedings abroad including Abu Salem, Kim Davy, Jagtar Singh Johal and others have questioned the country's investigative and criminal justice system in the absence of an effective and enforceable law against custodial torture. The damning slur on the nation's trial process and commitment to the rule of law itself was also not enough to move the court to exercise its "suggestive" jurisdiction. It

seemed legitimate to expect the highest constitutional court to inspire legislation that would vindicate the ethic of human rights as it has done so often in the past. Its decision, to the contrary, in a petition seeking a comprehensive legal framework against torture betrays, with respect, judicial inconsistency and an irrational flexibility destructive of legal certitude necessary for law to serve a stabilising function in our polity.

Walk the talk

Minister must surely know that when the dignity of a large section of its citizens is denuded, a diminished nation in default of its international commitments cannot expect to have its voice heard with respect in the chanceries of the world. The Vice President and Chairman of the Rajya Sabha, M. Venkaiah Naidu, who believes that human rights are guaranteed "...because of being a part of our DNA... ", must walk the talk, also because a 2010 unanimous recommendation of the Rajya Sabha's Select Committee proposing an anti-torture law remains unimplemented. The Attorney General likewise owes a moral responsibility to the nation in supporting the proposed dignitarian legislation against torture which is unburdened by a partisan political agenda. After all, it was his assurance to the court that the government was seriously considering the October 2017 recommendation of the Law Commission in support of a standalone anti-torture law which persuaded it to dispose of the petition without suggestive observations that would have strengthened a compelling constitutional cause with the court's moral authority. Parliamentarians who are privileged to represent the concerns of the people must keep faith and ensure the passage of a humanitarian law.

Whether or not the court was right in abdicating jurisdiction to enforce a dignitarian constitutional value in the premises afore is best left to be determined at a later date, considering that the court itself has repeatedly disavowed any claim to infallibility. In the meanwhile, we must strive to set higher standards of accountability for our constitutional functionaries in 2018. I wish to be able to remember this year as one in which we invested our democracy with dignity in an inseparable coalescence, when hope triumphed over despair and sensitivity prevailed over apathy. This year should be the year of a fulsome affirmation of our right to question, lest our silence be seen as acquiescence in constitutional aberration. Let us keep digging in for the values that define our nation.

Ashwani Kumar is senior advocate, Supreme Court and former Union Minister for Law and Justice. The views expressed are personal

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.

Lalu Prasad's version

Instead of talking about his dubious role in the fodder case, Rashtriya Janata Dal chief Lalu Prasad is busy accusing the BJP of trying to fix him in the case ("Lalu gets jail term of 3.5 years", January 7). Had the case gone in his favour in court, one is certain that he would have said that he respects the judiciary. The politician in him is very clear in the way he gives a twist to everything that goes against him. It is unfortunate that there are many in Bihar

The infidelity files

who blindly follow him

without raising any

questions about his

V. PADMANABHAN.

The debate over adultery is confusing and misleading (Editorial page - "This too is a right", January 6). That a woman has the right to choose her partner because it is a matter of her individual right and something that is a private affair, and, more importantly, that she is the decision maker in this process are points that are likely to create imbalances within the social system. Remaining within wedlock and then having multiple partners by defending it on the grounds of privacy and individual freedom enjoyed by an adult are bound to be disruptive. Loyalty, love and faithfulness are essential qualities in one's married life. A closely related issue that is increasingly affecting the world today is the rise in family disputes and the collapse of the institution of marriage. MINIAMMA K.C.,

Ernakulam, Kerala

adultery as provided for in Section 497 of the IPC touches upon some of the most controversial issues we face today such as gender inequality and the scope of privacy as a fundamental right. Drafted in the Victorian era, Section 497 is archaic and not in tune with the needs and values that prevail in a modern, progressive society. The penal provisions not only degrade a woman by denying her the power to sue her husband or the adulterer in case the husband commits the adultery but also rob her of the right to sexual privacy. Section 497 is a blow against the right to equality and liberty of women. The 'union of the trinity', liberty, social

equality and fraternity, has

again by the framers of the

Constitution. Delinking one

been reiterated time and

■ The petition challenging

the penal provisions for

DEBANJANA CHAKRABORTY

from the other will defeat the

very purpose of democracy.

Reasonable The Supreme Court's timeline to the government on ensuring full access for the disabled to public facilities is long overdue (Editorial - "Enabling a law", January 6). However, the government's efforts would be inadequate in isolation. The society around needs to recognise the needs of the disabled and enable their integration. The attitude towards disability is a negative one and has no place in a modern society. hanbad, Jharkhand

Acid attack survivors

It is a matter of utter embarrassment and shame that heinous 'acid attacks' are being perpetrated with

impunity and fearlessness in broad daylight ('Ground Zero' page - "Bengal's burning shame", January 6). Equally shameful is the fact that despite the various provisions in Indian criminal law to curb this, the 'deterrence factor' is missing, with rules being flouted every now and then. A poor conviction rate, studies have shown, dilutes the efficacy and the ability of the law to deter potential perpetrators, which is primarily the case with our system.

This is not just a matter of a

regular law and order problem but a more complex one involving the fundamental right of a woman to occupy public spaces freely and without

At the same time, one cannot totally blame the authorities for the prevalent situation, for without active societal involvement and appropriate behavioural changes, even the most stringent of laws are bound to be flouted. ATIN SHARMA,

MORE LETTERS ONLINE:

CORRECTIONS & CLARIFICATIONS:

Socialism. It should have been National Socialism.

In the Literary Review interview titled "Norman Ohler has shown that Nazi Germany was permeated with drugs, contrary to popular belief" (Dec. 7, 2018), one of the questions referred to Nazi

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