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BOOK REVIEW

HINDU 29.3.11 BOOK REVIEW

Is Pakistan a 'jelly state'?

SHAIKH MUJIBUR REHMAN

The book seeks to build a body of knowledge that falls under the rubric of Pakistan scholarship

TINDERBOX - The Past and Future of Pakistan: M.J. Akbar, HarperCollins, A-53, Sector 57, Noida-201301. Rs. 499.

The publication of this book has brought some dignity to the claim that India has some serious academic expertise on Pakistan. Although more than a score of diplomats and journalists are projected by the Indian media as Pakistan experts, hardly any Indian author figures in the list of top 20 books written on Pakistan over the past two decades. This could also be said of Indian scholarship on Middle East, Latin America, and many other regions. But it becomes a bit too embarrassing in respect of Pakistan because it happens to be our most important and, at the same time, highly sensitive neighbour.

Why is that so? It has much to do with the way our research institutions are run, and the state of area studies in our universities. India's Pakistan-centred scholarship is seemingly sandwiched between biographical writings on Jinnah and

accusatory references to Pakistan's role on Kashmir affairs. This research work seeks to break free from these stereotypes and build a body of knowledge that genuinely falls under the rubric of Pakistan scholarship.

Akbar's first book on Pakistan, *Tinderbox* is, in a sense, the culmination of some of his early research on South Asian history. It is likely to remain one of the major contributions on account of the sheer intensity of reasoning and the depth in analysis that marked the study of South Asia's convoluted history, its troubled politics, and its impact on nation states and multiculturalism. What emerges clearly from the narrative is that history matters. Akbar himself calls the book “a history of an idea as it weaved and bobbed its way through dramatic events with rare resilience, sometimes disappearing from sight, but always resurrected either by the will of proponents or the mistakes of opponents.”

Exaggerated

As the world debates the fate of Pakistan, the author says a few encouraging things about the future of Pakistani state. He asserts that “fears of Pakistan disintegration ... are highly exaggerated” and is emphatic that “driven by the compulsions of an ideological strand in its DNA, damaged by the inadequacies of those who could have kept the nation loyal to Jinnah's dream of a secular Muslim-majority nation, Pakistan is in danger of turning into a toxic ‘jelly state,’ a quivering country that will neither collapse nor stabilise.” The term “jelly state” is a new addition to the vocabulary related to state studies. Used as an ideologically loaded term, it has provoked massive research among major social scientists for generations.

Those who are familiar with the works of Max Weber, Theda

Skocpol, Charles Tilly, Jurgen Habermas or Anthony Giddens are likely to hesitate to embrace the idea of jelly state. Akbar does not use the word “state” with the same connotation as political sociologists often do. For him, it represents governmental infrastructure, and hence his argument that it would never disintegrate. It is also the reason why questions about its legitimacy or potential for responding to the developmental requirements are not raised. Instead, the concept recognises its minimal role as a government, with a power to coerce and thus govern or misgovern.

Some may note that questions regarding Pakistan's future have arisen prominently in recent years. But such questions are as old as its birth. It was Tariq Ali, who wrote a book titled, *Can Pakistan Survive?* (1984), with the similar objective of dealing with questions that Akbar raises. Two chapters in the book stand out as most original in their narratives. One is *A Theory of Distance*, which analyses the theology and politics of Shah Waliullah, and how his idea of “Islamic purity” for Indian Muslims was threatened by the Hindu infidel's cultural and military power. The other is *God's General* in which General Zia's role and contribution is discussed.

Party politics

Akbar contends that General Zia's decision in 1976 to change the motto of Pakistan army to *Jihad fi Sabil Allah*, in the belief that Islam alone could confront Hindu India, was a conscious strategic move, not a populist one as often argued. While the competing Islamic ideologies and their implications for Pakistan get adequate attention, one felt the author could, perhaps, have done better justice to the subject by examining party politics. After all, its impact on domestic politics — and by extension on the current mess that we see in Pakistan — has been quite

significant. Overall, it's an outstanding work, which those pursuing Pakistan studies and students of Islamic politics will find very useful.

CORRUPTION

A case for housing reform

Jaideep Mishra

Corruption is a worldwide phenomenon, a tall political leader is said to have rationalised, which seemed to suggest that give-and-take of the domestic variety was generally par for the course and nothing really to be worked up about. That was then, in the sclerotic seventies characterised by intransigent non-reform in policymaking and a panoply of rigidities. Fast-forward to the here and now and the latest WikiLeaks disclosures seem to even point at monetary inducements being readily offered to buy votes in Parliament during the crucial non-confidence vote against the government over the Indo-US nuclear deal. The allegations have been denied outright; the charges are unproven and not provable either, goes the official explanation, as the dispatches of representatives of sovereign states in foreign lands enjoy diplomatic immunity. But such a position is based on mere technicalities.

It cannot be gainsaid that the scope for corruption is widespread here and the degeneration appears all pervasive in public life. And there seems perverse incentive to cut corners and resort to corrupt practices, including reportedly forgery of commercial pilot licences. But to express disgust about malpractices and corruption within and beyond legislative halls would hardly herald change and reform. The way ahead to tackle corruption is to thoroughly reform the root causes for opacity and give-and-take, such as continuing non-reform in the funding of elections by political parties and routine lack of transparency in real estate and housing transactions. We need

to plug the institutional lacunae and drawbacks that seem to prevent good governance , including in electoral funding and routine non-compliance in the housing market .

Now, when it comes to reform of political funding, the tallest in the land say it requires political consensus (which presumably is absent at present). But we surely do need proactive policy to plan and follow through with reform of the housing sector, to bring about the much-needed transparency in buy-and-sell initiatives across the board. Now, the growing economic power of cities is a worldwide phenomenon. But the point is that the urban housing market here is wholly distorted with glaring rigidities, gross anomalies and sheer anachronisms . The maven estimates that India is likely to have about 45% of its population living in urban areas within the next two decades -up from just about 30% now -and the projections suggest major shortfalls in access to potable water, affordable housing and public transportation in our cities sans sound policy design in the medium term and beyond. What's required is substantial increase in housing stock and infrastructural services, so as to discourage rent-seeking .

It is notable that the recent High-Powered Expert Committee has been estimating the investment requirement for urban infrastructure services in the next couple of decades . The committee pegs the investment requirement for urban infrastructure services for the next 20 years at Rs 39.2 lakh crore at 2009-10 prices, with the bulk of it - 44% - proposed to be earmarked for urban roads. The expert take is that there is a huge investment backlog in the segment pan-India . Next, infrastructural services like water supply, sewerage and storm water drainage would require another 20% of the funds, or Rs 8 lakh crore. A smaller corpus, Rs 4 lakh crore, is allocated for urban renewal including redevelopment of slums. The figure appears to be a gross underestimate, given that over half the population in

Mumbai, for instance, already resides in slum-category housing. Note that funds requirement for sectors like power distribution have been excluded, as they are beyond the very scope of the report.

The expert panel vouches for a switch to a mayoral system in our cities to rev up accountability , and incentivise proactive policy to shore up muchneeded investments. The present system of state government bureaucrats directly in charge of urban renewal seems sub-optimal , the report avers. The objective of policy ought to be to step up funds flow with innovative mechanisms and actualise investment in trunk infrastructure to boost the housing stock and, so, considerably reduce the massive gap in supply. In parallel, what is essential is to liberalise and increase the floor area ratio (FAR) in our cities, and not just in the city centres, to increase supply of affordable housing.

A McKinsey report last year estimated that with reform of FAR norms and attendant policy and governance reform such as a national mortgage guarantee fund, it should be possible to increase the supply of affordable housing 10-fold , or 20 lakh dwelling units ayear. In tandem, the latter report also suggests that 30% of all affordable housing be available to rent. The bottom line is the need to improve transparency in real estate investment and put paid to the high-cost regime in housing, high stamp duties and the like, to purposefully improve living conditions, networks and foster innovation as well.

CONSUMER WELFARE

Now, voters seek customer care

Shobhan Saxena

In the 1977 [Lok Sabha election](#), the people of [Rae Bareli](#) voted for the virtually unknown Raj Narain. Prime Minister [Indira Gandhi](#) lost the election from the constituency she used to call her 'sasural' because her late husband Feroze had been elected Rae Bareli's MP two times. In 1980, just two-and-a-half years after the Emergency, Indira Gandhi won the Rae Bareli seat. Experts called it a sign of the Indian voter's maturity in "teaching Indira Gandhi a lesson for the atrocities of Emergency".

But is there a distinct species called the Indian Voter? Are ordinary Indians so politically smart they vote for one party in state elections and another in national elections in order to maintain a balance in the federal union? Yes and no.

Anil Bairwal, director of the Association for Democratic Reforms, says national issues have state-level echoes now. "It's wrong to call corruption a national issue because now there is corruption at all levels. The only truly national issues are defence affairs or foreign policy matters. Of course, these issues are not discussed in state polls. They are also not discussed in detail in national elections".

There are those like Bairwal who believe it's not so much the profile of the Indian voter that has changed but the nature of politics in the country. "Political parties are not interested in mass mobilization on crucial issues. They want to sway the voters with populist policies and freebies as you can see in Tamil Nadu," says Bairwal. Tamil Nadu may appear an electoral basket case but the story in other

states is not very different.

A south [Delhi](#) businessman, who has "financed" unique election campaigns, says: "Everybody knows about the role played by alcohol in elections in Punjab and Haryana. Just before state elections, all political parties distribute free whisky bottles in all villages in that part of the world. A simple audit of alcohol consumption can expose this".

So what's the main electoral difference between rich [India](#) and poor Bharat? The Delhi businessman-electoral financier says it's sharp and distinct: "In poor states it's free saris and blanket; in rich states, it's free alcohol."

But sometimes elections may be manifestly about growth and development. Nitish Kumar swept the recent Bihar election on a campaign—and a track record—that emphasized development. Shaibal Gupta of Patna's Asian Institute of Development Studies says it was a sign that "the relationship between the voters and parties has changed. Now, the people see political parties as service providers and politicians see people as clients. If you deliver, you win election. If you don't deliver results, all freebies and all slogans of caste and religion are not going to work".

Gupta adds the young voter is restless and wants quick results." He may have a point. Roughly 65% of Indian voters are less than 35 and it is true that this client-service provider seems to have worked for some political parties in some states. But Bairwal insists that "with so much poverty, freebies actually work among the poorer section of the society." But he adds that the middle classes are "becoming cynical about the whole exercise".

Clearly, the Indian voter is not a single species. There are many

kinds and each has different priorities and a different politics, which changes constantly as in Rae Bareilly in 1977 and 1980.

ENVIRONMENT

Let's clear the air

Jaithirth Rao

Minister for Environment and Forests Jairam Ramesh has come up with an important suggestion. He has said that the current reporting structure of the Atomic Energy Regulatory Board (AERB) may not be the ideal one. The AERB reports into the Department of Atomic Energy (DAE) of the Union government. There could be a conflict of interest while approving the setting up of new atomic power plants and also while conducting ongoing safety and security inspections. It could be argued that the DAE would wish to “promote” nuclear power in India — and therefore, even with the best of intentions, today’s AERB might be tempted into making the approval process for new plants less stringent; similarly, the pleas of the commercial nuclear power industry that certain safety features/ measures are too costly may also receive more sympathetic consideration than would be the case if the board were independent.

The growth of nuclear power in India requires broad societal consensus. The NIMBY (not-in-my-backyard) phenomenon where villages/ towns/ districts concede the need for nuclear power stations but keep arguing that these plants should be located elsewhere as they are detrimental to the environment, livelihoods, etc in their own village/ town/ district is bound to gather momentum. This momentum will become unstoppable if the approving authority is seen as biased in favour of the industry (presumably rich, powerful and well-connected) and not in favour of the communities where the

plants are located (presumably poor, powerless and lacking in influence). The AERB may be functioning quite genuinely without any bias. That fact becomes quite irrelevant. It is the perception of a possible bias which will discredit its approvals in the minds of the affected communities. On this point, Ramesh is quite right.

This columnist would like to point out that a similar logic applies to the current “approvals process” from his ministry of environment and forests. Even though he and the civil servants in his ministry may be operating without bias, the fact of the matter is that when it gives an approval, withholds one or cancels an earlier approval, it is almost invariably seen as arising from short-term political considerations.

The flip-flop on the Posco plant is a good example. The cancellation of the approval was first seen as a political move against the BJD which is in power in Orissa — and which by happenstance is not part of the UPA dispensation in Delhi. The reconsideration later is being seen as a result of the Korean government putting pressure on India. Now, as a matter of fact, all the actions of the environment ministry may in fact be perfectly valid, reasonable and correct. But that is not what it will be believed to be. The Vedanta story has similar overtones. The Congress party’s desire to capture the emerging tribal votebank is seen as behind the anti-Vedanta stance. This is exacerbated by the fact that Scandinavian and Canadian business interests are perhaps behind the funding of the shrill anti-Vedanta campaign by NGOs and the Anglican church in Britain. Lavasa is seen by many as the victim or the beneficiary of internecine UPA politics.

In fact, the joke making the rounds is that the best way to stymie a competitor is not by making a better product at a lower price, but by funding NGOs to raise environmental objections and using political

clout to get the ministry to hold up the competitor's new factory/ mine/ plant. The point is that, irrespective of the facts, the environment ministry's decisions can be seen as motivated, biased and so on. All of this is exacerbated by the fact that the ministry and other government bodies are seen as being unable and unwilling to ensure that the "conditions" attached to a "conditional approval" are in fact fulfilled.

Why does not Jairam Ramesh as part of his legacy to the country remove the power of discretionary approvals from his ministry and hand it over to an independent "Environment Commission" to be statutorily established and charge this commission with the tasks of granting and monitoring approvals? Appeals from this commission should go directly to a tribunal and then to the courts rather than through a slow and cumbersome judicial hierarchy. This commission would be along the lines of the Election Commission or SEBI where the members are appointed for fixed terms. Preferably the commission should be located outside Delhi. (In passing, it should be noted that SEBI and IRDA which are located outside Delhi have performed with greater credibility and perceived integrity than the TRAI which is located in Delhi!) Several of SEBI's decisions have been appealed. But on balance, most of its decisions regarding approvals for IPOs, fines for non-compliance, restrictions from capital market access, etc have been seen as fair and have helped the reputation of Indian capital markets — one soft infrastructure item where by all accounts we are way ahead of China, unlike in the hard infrastructure sector China is a decade, if not a century, ahead of us with respect to bridges or railways.

The environment commission could not only implement transparent procedures for approval of projects, but also monitor them. If a company or some investors flout SEBI regulations, they are fined and sometimes they are not allowed to access or invest in capital

markets for a defined period. If a company does not comply with the conditions of a conditional approval, the environment commission can refuse to give fresh approvals or force a transfer of the project (and the rights associated with it) to another company through a transparent auction process. As one of our prominent citizens, Azim Premji, said, “If we can have an independent regulator for our capital markets, why not one for our water resources which are far more important than our financial resources?”

In giving up control, Ramesh will meet resistance from many in the political and bureaucratic establishment. But if he wishes to go down in Indian history as a Sher Shah, a Munro or a Curzon, this is his golden opportunity. Let’s hope he grasps it.

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**Learning from Japanese crisis
But no need for panic reaction**

O.P. Sabherwal

IT would be a “tragedy of errors”, to use a Shakespearean metaphor, if India’s nuclear power programme — an area of advanced science where India is on the forefront world-wide — is slashed in response to the crisis brought about by nature’s fury in Japan. That would be a big blow to Indian economic development, opening power generation to the ravages of crippling environmental pollution from coal-based thermal plants, and still leave a big void in the target that nuclear power generation was expected to provide — a target of 63,000 MWe during the two decades ahead.

That, of course, does not mean that India and the world can minimise the lessons of the nuclear crisis in Japan, unleashed by a monster tsunami in the wake of a massive earthquake. On the contrary, there are vital and very timely lessons that need to be imbibed by all countries — India certainly — that intend to use nuclear energy for economic advance. But in order to avail of these lessons, an objective, knowledge-based approach is required, not panicky knee-jerk responses.

It has rightly been stated by the Prime Minister in Parliament, and emphasised by top scientists, that the Indian nuclear establishment has all along given primacy to safety parameters — reactor design, double containment construction shielding the reactor vessel, elevating safety features progressively, etc. The result: India’s nuclear power plants have now a passive safety system that shuts

down reactor operations automatically even on a single fault. It is also true that the Indian reactors have successfully withstood both the tsunami onslaught in 2004 and the earthquake that devastated Bhuj in Gujarat in 2001. Barring the turbine fire accident at Narora in the first phase of indigenous reactor construction, the Indian reactor operations over three decades have set up a unique safety record.

And yet the nuclear crisis in Japan is a stern warning. All the existing safety parameters have to be re-examined and further strengthened. It must be accepted that Indian nuclear establishment's safety attainments are not enough. A more stringent approach to all facets of safety of reactor operations is called for. And the lessons from Japan's nuclear crisis need to be assiduously learnt. Some of these lessons can easily be pin-pointed.

First, the cooling system — the system that failed to perform in the Fukushima reactors, since there was insufficient electricity back-up after the tsunami resulted in botching up electricity availability. The lesson from Japan for India and the world is to insulate the cooling system that has a key role to perform once the reactor shuts down in an exigency. The Indian nuclear establishment has notable attainments of indigenous technology in building coolant channels. They have to extend R & D in this area in order to insulate the cooling system from all possible natural disasters, just as much as operational hick-ups.

Second, the Fukushima site was particularly vulnerable, being in the most dangerous seismic zone. Even if this may not be applicable to India, the site selection committee must apply more stringent criteria for all future nuclear projects. Gujarat's Kakrapar reactors have been rated (in 1998) among the best in the world. But notwithstanding the fact that they withstood the ravages of the Bhuj earthquake of 2001, future reactor sites must avoid earthquake-prone locations. Another

criterion should be to avoid the east coastal zones despite Kalpakkam reactors having withstood the tsunami depredation in 2004. Experience has shown that it is the east coast areas that tsunamis have done the maximum damage.

Third, reactor design selection is of key importance in the safety parameters. The safety features have been progressively enhanced in modern reactor designs. The Indian indigenous PHWR reactors have enhanced safety features. Yet there should be no complacency; the Indian nuclear establishment needs to upgrade safety features of the new 700 MW PHWRs whose construction is being undertaken. Possibly, the Indo-Canadian nuclear cooperation agreement inked recently may enable joint research to this end.

It is equally important that in the selection of reactor designs of imported light water reactors, a very high degree of technological perfection is sought. These reactor designs have to be of proven record, and nothing but the best has to be accepted.

Our sympathies with the Japanese people notwithstanding, it should be accepted that the Japanese nuclear authorities of the Tokyo Electricity utility have been complacent, if not callous, in this regard. The Fukushima reactors were based on 1972 vintage GE boiling water reactor design, and their lifespan was fully exhausted. And yet, early this year before the devastating earthquake struck Japan, the Fukushima reactors' life-span was extended by another 12 years. And this without any technological upgrading, ignoring the extreme vulnerability of the seismic zone in which these reactors were located, thereby displaying the grip of commercial motives that pervade the Tokyo Electricity utility.

We note that Tarapur 1 and 2 reactors are of a similar GE boiling water design, and of even older vintage. But it must be said to the credit of the Indian nuclear establishment that technological

upgrading has all along been injected into the GE design and the consequence is the success story that we have at Tarapur. In fact, Tarapur 1 and 2 reactors are not what the GE left behind and, with American sanctions imposed on Indian nuclear facilities for 30 years, it was Indian nuclear capability alone that kept these reactors functioning so well. However, even Tarapur 1 and 2 have long completed their life-span, and have been given a second five-year extension. For how long? The NPCIL must determine the life-span of these reactors, keeping stringent safety audit in view.

Fourth, and perhaps the most important factor in the quest for safety, is the need to elevate the status and capability of the Nuclear Regulatory Board. As of now, the AERB is subservient to the AEC whose operations it is supposed to watch — with vigilance and a critical eye. Even though the AERB is an adjunct of the AEC, its status as a watchdog needs to be upgraded. The Indian nuclear regulatory body should function somewhat like its counterparts in France and the United States: equivalent in status to the Atomic Energy Commission. The second requisite for the nuclear watchdog to effectively safeguard nuclear operations from transgression is to add to its knowledge pool by close linkage with the International Atomic Energy Agency.

All said and done, it needs to be recognised that extracting energy by splitting the atom is a knowledge-based technology, which requires constant upgrading. It has both plus and minus points. Radiation is a hazard if allowed to spin out of control. Its strong counter-balancing plus points are: (a) that nuclear energy is perhaps the only large-scale energy source that can fill the void of fast depleting fossil fuels, already being priced out, threatening inflation and the fabric of the economy; (b) it is the only non-pollutant alternative to fossil fuels that threaten catastrophic climate change, posing the biggest challenge to mankind.

It is for these reasons that nuclear energy has become a critical requirement of India's growth plans. The fact is that India's growth projections and the corresponding energy needs are unsustainable without large tapping of nuclear energy. The target of 63,000 MWe of nuclear energy capacity by the year 2032 as visualised in the Integrated Energy Policy takes these factors into account. It is a tough goal, but the attainments of India's nuclear establishment are paving the way for realising this goal.

The writer has authored a book, "India's Tryst With The Atom".

Green reform

Minister for Environment and Forests Jairam Ramesh must be commended for his frank comments on the state of the Environment Impact Assessment (EIA) process. Many well-regarded scientists have been making the point that the EIA, a mechanism instituted by the Ministry of Environment and Forests in the early phase of India's economic liberalisation and amended in later years, has been turned into a joke because it is left to the project proponent to arrange for the EIA report. This dysfunctional system has produced only a thriving industry of consultants. Many of them without the requisite qualifications; some are nothing more than paid pipers. It is no surprise that several reports submitted by these consultants have been exposed as plain cut-and-paste reproductions of other publications. Among the prominent examples of ill-advised shortcuts leading to flawed conclusions is the Kudremukh iron ore mining project in Karnataka, which was eventually ordered closed. In that case, only rigorous assessment by the Indian Institute of Science and other agencies produced evidence of harm to fragile ecology; comprehensive study by the Centre for Wildlife Studies documented environmental damage on account of the sediment load in the Bhadra river. Evidently, the earlier EIA reports based on rapid assessments provided little insight. This experience is not unique and there is a strong case to introduce stringent checks now. Reform should begin with the choice of agency to conduct the impact assessment, and include the setting of wide terms of reference.

The task of reforming the EIA process is a challenging one for Mr. Ramesh, who has initiated welcome steps to introduce transparency in his Ministry. State-level authorities must also be made partners in

the effort because some categories of environmental clearances come within their ambit. Independent studies of the working of expert appraisal committees formed under the EIA Notification of 2006 show that the rejection rate for projects in sensitive sectors such as construction, industry, thermal power plants, and mining is suspiciously low. The Union Ministry's discovery that some consultants submitted wrong reports, resulting in penal action, is proof positive of systemic rot. The cure lies in genuine, science-based EIA. All this is not to say that fresh barriers must be erected to development. What needs to be emphasised is the importance of assessing externalities associated with individual projects and consider them in perspective. The loss of ecology has irreversible, inter-generational consequences. The protection of air, water, soil health, and biodiversity should be primary environmental imperatives.

JUDICIARY

Judicial Standards & Accountability Bill

Ajit Prakash Shah

In a system where half the litigants must necessarily lose their cases and where most complaints against judges are frivolous, the Bill, if implemented, would mark the beginning of the end of the judiciary.

The last two decades have marked the extraordinary rise of India. This has however been tinged with cynicism about our major democratic institutions and a pessimism about their future. The judiciary, which till now has been looked upon as the strongest pillar of Indian democracy, has been beset with unprecedented problems. In recent times, the working of the judges of superior courts (High Courts and the Supreme Court) has come in for intense scrutiny and grave doubts have been cast against the conduct of some judges. The pressing call for greater institutional accountability in the Indian judiciary is now stronger than ever. It is in this light that Parliament's proposed Judicial Standards and Accountability Bill, 2010 must be seen.

This Bill appears to be a hurried and knee-jerk reaction to recent events, and has the potential to seriously undermine judicial independence. It seeks to devise a new “complaint procedure” under which any person may be able to file a complaint in writing against any judge of a superior court. Upon such a complaint being filed and examined, the Judicial Oversight Committee (proposed to be constituted under the statute), may either dismiss the complaint or make a reference to Parliament for the removal of the judge, issue advisories, warnings, withdraw judicial work or make a request for voluntary retirement.

The issue of Judicial Standards must be seen in the context of Art 124(4) of the Constitution which provides for the process of impeachment of a judge on the grounds of “proved misbehaviour or incapacity.” Art 124(5) empowers Parliament only to make laws to regulate the procedure for presentation of address of impeachment, and for the investigation and proof for the misbehaviour or incapacity of a judge.

Cleverly disguised Bill

The present Bill, cleverly disguised as being permissible under Art 124(5), is an example of the most blatant violation of constitutional safeguards and is a cure that is surely worse than the disease. Article 124(5) does not empower Parliament to create any other forum for recommending impeachment proceedings, or allow complaints to be made by any person, or to make a judge liable for minor penalties. What can be done only by a hundred or more members of the Lok Sabha or fifty or more members of the Rajya Sabha (i.e. initiation of impeachment proceedings) can now theoretically be done by only one person.

It is true that judicial commissions exist in other countries like the U.S. and Canada, but their reach does not extend to the apex court. Also, adopting such structures from other countries without having regard to the unique conditions existing in ours, is untenable and fraught with the danger of destabilising our delicate constitutional balance.

Outlined below are some of the other major defects in the Bill:

Definition of misbehaviour: The Bill seeks to provide a straight jacketed definition of misbehaviour in Clause 2(j), but by laying down a strict definition, the concept loses its elasticity and becomes both under-inclusive and over-inclusive. Over-inclusive, that absent a de minimis exception, even a minor breach of judicial standards,

say late filing of assets declaration, could constitute misconduct; and under-inclusive that to the extent that the definition is exhaustive (since it uses the word “means”), it is incapable of catching within its fold any “misbehaviour” that might not be covered by this provision. The Constitution framers had been careful not to define the term misbehaviour, let alone define it exhaustively. Implicit in this understanding was the belief that if the power of removal was vested in high constitutional authorities, they would be in the best position to judge when misbehaviour (or incapacity) had been occasioned.

Statutory provision for judicial standards: The Bill also provides a list of standards of judicial conduct to which all judges are expected to adhere. Sixteen of the 18 enumerated standards are derived from the “Restatement of the Values of Judicial Life” adopted at a Full Court Meeting of the Supreme Court on May 7, 1997. However, the very idea of statutorily providing for judicial standards, irrespective of their content, is violative of judicial independence.

A significant portion of litigation before higher courts today is public in nature and involves the State as one of the parties. Laws are also routinely impugned for their unconstitutionality. Given this, investing the legislature with the power to lay down and amend the standards which all sitting judges must adhere to (or risk the proposed penalties), has the potential to severely threaten impartial and effective adjudication.

Scheme of filing complaints: Under the Bill, “any” person may file a complaint in a prescribed format. Further, the proposed Judicial Oversight Committee will just act as a post-office and refer each complaint to a Scrutiny Panel. This is likely to lead to a multiplicity of complaints and even though the Bill proscribes false and vexatious complaints under Clause 53, this is unlikely to prove much of a deterrent, and since each of them will have to be checked

by the Scrutiny Panel, it is also likely to result in a colossal waste of time. Clause 18 provides that the Oversight Committee shall consist of five persons with two serving and one retired judge, an appointed eminent person and the Attorney-General of India. The presence of the Attorney-General on the Oversight Committee is highly suspect. The Attorney-General has the responsibility of regularly appearing on behalf of the government before the court.

On occasions, the possibility of his appearing before a judge against whom a complaint has been filed cannot be ruled out. In such a circumstance, there is clearly a conflict of interest since the Attorney-General will be a member of the Oversight Committee to look into the complaints made against the former. The Scrutiny Panel is to consist of three members, two of whom will be judges sitting in the same court as the judge against whom the complaint is made. Since these judges would be colleagues sitting in the same court, it is likely that this will, either way, influence their conduct. It would be difficult for judges to dispassionately decide a case against one of their own and sitting with them day in and day out.

Furthermore, the composition and tenure of the Investigation Committee which is to be constituted for the purpose of enquiry into misbehaviour by a judge is undefined. Theoretically, therefore, it is possible for a lay person without any knowledge, experience or standing to be a part of an inquiry panel against a sitting judge of a superior Court.

Minor punishments: The idea of “minor” punishments is unworkable and has the potential to seriously undermine judicial status. If sitting judges are issued advisories and warnings and thereby publicly censured, but still continue on the bench and decide cases, this damages the credibility of the entire system.

Atmosphere of secrecy: Through Clause 43, the Bill completely

excludes the operation of the RTI. This establishes an atmosphere of total secrecy more regressive than the present system, and for which, there does not appear to be any rational reason to make a change.

Conclusion

It is totally impermissible for the legislature to strike upon the independence and fearlessness of the judiciary. A judge of a superior court cannot be treated as an employee of the government. The present Bill is incapable of salvage and must be rejected in totality. In a system where half the litigants must necessarily lose their cases, and where most of the complaints against judges are frivolous and made by disgruntled litigants, this bill, if implemented, would mark the beginning of the end of the judiciary.

Demands for change to existing systems in the judiciary must be met rationally, bearing in mind the objectives sought to be achieved. The first site of change must be in the process of judicial appointments. The present system where judges of the superior courts are chosen based on undisclosed criterion in largely unknown circumstances reflects an increasing democratic deficit. The legitimacy of the judiciary ultimately flows from public support, which cannot be maintained without a transparent and open selection process.

The guiding principle should always be this: accountability there is and must be, but let it always be commensurate with judicial independence and impartiality. Ultimately, the appropriate balance between competing principles must be found in something that is best suited to our constitutional setup and is, in that sense, uniquely Indian. The citizens of India deserve no less.

(Justice Ajit Prakash Shah is former Chief Justice of the Madras and Delhi High Courts.)

POLICE

Reforms in police

Police administration have rarely focussed on the much-harassed policemen at the grassroots. As they play an important role at the cutting edge, they need to be trained and equipped well to meet the challenges Reforms must begin at the grassroots

Rajbir Deswal

THE policemen at the grassroots do not get the attention they deserve. When a crisis erupts suddenly at the cutting edge level, they find it difficult to handle it in the absence of adequate training. Their intelligence system often fails and things go out of control, making it difficult for even their seniors to salvage the damage done. No doubt, the hard-pressed subordinates have a plethora of jobs at hand. And each task cries for attention.



Tackling protesters has become a major challenge to the police today. Tribune photo: Manas Ranjan Bhui

There are certain areas where the police action is characterised by highhandedness and violation of the avowed principles of police administration till the final run-up to a satisfactory and fruitful delivery of services expected by society at large. Free registration of crime is still a far cry. Complainants do not get feedback on their petitions, recoveries are fake. And witnesses are non-committal and planted.

Police continue to use third-degree methods to get quick results. Forensic science tools are not fully employed. Intelligence gathering is

poor. Most arrests are unwarranted; these are made only to extract money in many cases. Poor infrastructure and resources and outdated communication equipment leave the police far behind the criminals.

Mr K. Koshy, former Director-General, Bureau of Police Research & Development, suggests various reforms in the Indian context to stem the rot. According to him, “open the reporting in police stations to the public. The sentry should concentrate on the prisoner and the malkhana, not to stand there just to intimidate the public. The reporting room should be made a pleasant place with modern bank-like atmosphere. In the UK, the reporting officers are more often than not civilians, specially trained to handle the public. Call Centre type of training should be given to those who attend the telephones. A PRO, as in the US, should be made available for giving out the latest position of cases, complaints, verifications, and other outcomes.” What we lack in Indian police is their non-appreciation of the concept of “participative policing by the people” as in Singapore; social policing as in Sweden; and community-oriented policing as in the UK, Hong Kong, Canada and the US.

Of course, some states like Andhra Pradesh and Madhya Pradesh have taken a lead in this regard by enacting laws and building bridges with the community by setting up police-public committees. Ground work, delivery, action and results will flow naturally if the police adapt itself for purposes of investigation to free registration, faithful recording of a complaint (FIR), recording direct evidence corroborated by scientific and forensic attributes, not using third-degree methods, joining genuine witnesses and not from the stock, not making arrests where they are unwarranted and, above all, winning the trust and confidence of the people.

There is a need to tone up the police administration on modern lines. The police can win the hearts of the people by speedy redressal of their grievances; by making themselves available in times of crises; by being

courteous; by empathising with them and, above all, by pursuing a thoroughly honest approach to every task they undertake.

The International Association of the Chiefs of Police has debated the issue of ‘Citizens Review’ which envisages “public concerns about racial profiling, excessive use of force, deliberate violations of sanctioned evidence handling procedures, and corruption creating mistrust.” The apparent failure to contain these issues causes public policymakers to consider alternatives. As these issues bear focus on the ground zero, every effort should be made to implement them. All action begins with the first-responder not only in a crisis situation but in peace time too.

The police reforms should begin with the clearly mandated assignment of tasks, fixing responsibility in case of any failure, ensuring proper and fair recruitment and putting through need-based training, regulating day-to-day policing keeping the community interests and expectations in mind, ensuring a speedy and transparent delivery of service to the stakeholders.

Police reforms at the grassroots need to correct the wrongs the functionaries indulge in, in the absence of effective supervision and no accountability fixed on them. Stringent punishment should be given to those found on the wrong side of the law. Action should be initiated against cops for their acts of collusion, highhandedness, corruption and so on. In the US, if a police officer is accused of withholding the truth, or is lying during a trial, in all cases that he stands as the official witness, his testimony is taken with a pinch of salt and is discarded as an interested witness.

There is need for separate police wings in a police station to cover four major areas: investigation and detection; law and order; regulatory duties like traffic, service of summons and warrants etc; and special cells to cater to cyber crime, economic offence, juveniles and trauma victims. It

is only the tactical squad which should handle riot and arson cases where crowd control is to be exercised.

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POLITICS AND GOVERNMENT

The BJP needs help

Tavleen Singh

The people in charge of making political strategy in the Bharatiya Janata Party at the national level, need to be put out to grass in some very remote rural outpost as soon as possible. After this happens, the BJP must organise one of its famous 'chintan shivirs' not just to think about where the party is going but to actually worry about the directionless meanderings that have defined its course since the 2004 general election was lost. So purposeless has the BJP's role become as our main opposition party that we have grown accustomed to it making a racket about the wrong issues and remaining silent about real ones. But, last week's performance during the concluding days of Parliament's Budget Session exceeded anything that has happened before. On the day that the Finance Minister asked the Lok Sabha to pass his Rs 12.58 lakh crore Budget, the BJP walked out because it thought the WikiLeaks cables were more important.

If this is not bizarre behaviour, it is hard to think what is? Was there not one person in the BJP who noticed anything in the Budget that was worth asking some questions about? What about just asking the Finance Minister why he continues to spend

Rs 40,000 crore on MGNREGA when he knows, from members of Sonia Gandhi's own National Advisory Council (NAC), that half this money is being lost annually due to corrupt practices? What about a few questions on the NAC itself like whether it has a constitutional right to use taxpayers money to pay for its very expensive and very leaky schemes?

What about asking the Finance Minister what he has done to ensure proper storage facilities for the bumper harvest that is about to come? How can he allow the NAC to come up with a massive food security scheme without first investing in better storage facilities? What about asking what measures the Finance Minister has taken to stop wasting money on public sector companies like Air India?

That the BJP believes that these things are not as important as the WikiLeaks revelations is beyond belief. The leaked cables reveal only what we already know, what has already been discussed in Parliament, that there was an attempt made to buy support for Dr Manmohan Singh's government in 2008 when his government faced a no confidence vote. The cables also reveal that Shri L K Advani assured American officials that if he became prime minister in 2009 he would not reverse the Indo-US nuclear deal because the BJP's public opposition to it was just a sham.

He did not, sadly for him, become prime minister in 2009 and in this could lie the crux of the BJP's problems. When Dr Manmohan Singh taunted Mr Advani, during the WikiLeaks debate, about him believing it was 'his birthright' to become prime minister in 2004, he was more right than he probably realised. So baffled by the election results was the BJP's ageing 'rathiyatri' that he turned to astrologers for solace and they gave it. As always, they spoke in half measures so poor old Mr Advani was comforted by their accurate prediction that Sonia Gandhi would never become prime minister. What they failed to tell him was that nor would he, so he has continued to dream on. And, in dreaming, has forgotten the need to build the party.

The defeat in the 2009 general election should have made the BJP's senior leaders realise that they needed to seriously analyse what was going wrong but this has not happened yet. So nobody has so far noticed that the BJP can win only when it stops behaving like a clone of the

Congress Party. Where its chief ministers have shown (Gujarat comes instantly to mind) that they really have something new to offer, they win again and again.

Narendra Modi dazzled an audience of Delhi liberals at the India Today conclave earlier this month because he outlined a clear vision of India as a great power in the near future if it capitalised on its three main strengths: democracy, a functioning judiciary and a huge population of young people. He then explained in detail the things he had done to make Gujarat the fastest growing state in India. He talked of innovative agricultural schemes, education reforms, schemes to provide electricity in villages and his government's investment friendly policies. Why are the BJP's national leaders not seeking his advice on how to move forward?

Without new advisors, new policies and a new vision for India (sans Hindutva), the future looks bleak. The BJP's abysmal failure as our main Opposition party, despite seven years of practice, is one of the reasons why the Prime Minister continues to get away with the very bad government he has given us in his second term in office

On political space and coalitions

K.S. Jacob

The number of coalition partners in political formations is inversely proportional to the availability of political space for diversity and dissent within political parties.

India is the second most populous country in the world with roughly one-sixth of its population. Its federal, parliamentary and representative multiparty system makes it the largest democracy. The fact that the majority of its people did not have formal education did not deter the architects of our Constitution from recommending universal adult franchise. The regularity of regional and national elections, their fair conduct and their ability to usher in new political formations suggest phenomenal success with democracy. This is particularly true in the context of the divergent trajectories of politics and governments among our neighbours in the subcontinent. Nevertheless, the recent era of coalition politics and its compulsions demand analysis.

The freedom movement, led by the upper castes and the rich and landed gentry, morphed into the ruling class. Its leaders formed the Indian National Congress. Their promise of a secular and socialistic society received nationwide support. The party won many State and national elections and ruled the country during the first two-three decades. Gradually, the sheen wore off. The party's penchant for dynastic politics, its intolerance of dissent, empty slogans of an inclusive society and the excesses during the Emergency in the mid-1970s led to disillusionment among the people and its resounding defeat at the polls. About the same time, some States saw the

emergence of regional parties, pushing local and regional agenda. The last three decades have seen the emergence of many regional, linguistic, religion and caste-based political formations across the country, fighting to represent the diversity of India's people and their distinctive interests.

Representation without empowerment: The initial excitement generated by universal adult franchise gave way to cynicism. The five-yearly exercise of elected representatives seeking the people's consent for re-election became a ritual. The initial hopes and dreams of the majority, the poor, were soon shattered with minimal changes in their lot. The original enthusiasm, when faced with an option of voting for different parties, gradually faded with the realisation that the choices provided no real alternative. Representation of people in the legislatures and the government did little for their empowerment.

Nevertheless, political parties soon realised the importance of identifying dominant socio-demographic pressures within constituencies. Religion, language, caste and community determined the choice of candidates rather than integrity, ability and policies. Matching candidates with dominant local identities was found to be a vote-winning strategy. However, these linguistic, regional, religious and caste considerations seemed to matter little after results were declared. People soon realised that their representatives did not represent their perspectives and priorities in the legislatures and governments. Political parties were quickly able to assuage the feelings of many elected representatives by sharing the spoils of power. Nevertheless, discontent gave way to factionalism and fragmentation of the polity. The realisation that large national parties fail to represent the diversity, divisions and pluralism in the country has accelerated the support for regional formations.

Space and growth: The space and choices for politicians were restricted. Autocratic leaders, family rule, religious and caste

considerations produced glass ceilings within parties. The lack of true intra-party democracy, at the grass-root and higher levels, resulted in frustration among budding political leaders. Local and regional aspirations were stifled. Token representation, the norm in most political parties, denied empowerment of individual representatives and their constituencies. Many leaders with political aspirations moved out to form their own political factions. Many succeeded. Their ability to tap into local and regional discontent and the chauvinistic nature of their campaigns paid handsome electoral dividends. These gains multiplied their power and ability to take on and negotiate with national parties.

Telangana is a classic example of economic growth without political space and empowerment for its people. The complex caste equations in Andhra Pradesh marginalised their representatives, restricted their political space and limited their political emancipation, resulting in the birth of the Telangana Rashtra Samithi. The Bahujan Samaj Party and the Pattali Makkal Katchi brought together people and priorities based on support from specific formations. Mamata Banerjee, Kalyan Singh and Uma Bharti felt suffocated and squeezed out of political space and formed their own outfits, with varying degrees of success. Many breakaway factions of the Congress supported regional aspirations, which did not find articulation within the larger organisation. Many of these leaders and splinter groups now have much greater power outside the larger parties than they did when they were inside the organisations.

Coalition conundrum: The Left Front in West Bengal was the first coalition, which has successfully won and retained power for over three decades. Kerala also saw major fragmentation within the larger political parties and the resultant formation of coalitions. Such coalitions at the State level have been relatively stable both within the government and in the Opposition.

The last two decades have seen the rise of coalitions at the national level. The initial unstable coalitions have given way to secure alliances, which have brought in major reforms and significant shifts in policy. They seemed to have even enhanced democratic legitimacy, representativeness and national unity. Many parties have become skilled in the required negotiation, cooperation and compromise. Marriages of convenience between incompatible partners have given way to durable, flexible, pragmatic and evolving partnerships. Many parties seem to be able to paper over their contradictions. The temporary nature of their initial relationships within coalitions seems to have matured into established associations. Pre-election negotiations and agreements with common minimum programmes strengthen such arrangements and are now recognised by the electorate. The electorate, through tactical voting, often supports these united platforms. While regional issues dominate many campaigns, the electorate also seems to keep an eye on the need for stable formations at the Centre.

The larger national parties, which did not provide political space for local and regional aspirations within their rigid structure, are now forced to make much bigger compromises with dissidents who are their regional partners. Regional formations, with specific local support, have been able to extract greater concessions and a larger slice of the political pie. The national parties now regularly moan about the disproportionate powers of regional outfits. They blame the lack of progress on the coalition dharma with its committees, consensus and compromise. Nevertheless, pragmatic approaches (e.g. of the Congress) seem to be more successful than those driven by ideology (e.g. of Bharatiya Janata Party and the Left). Political parties will necessarily have to formulate inclusive agendas and frameworks to succeed in coalitions (e.g. the BJP in Bihar).

Intra-party democracy and political space: The few large national parties find it difficult to do justice to the diversity and complexity

of India. However, while regional parties are here to stay, all parties would benefit from genuine intra-party democracy. Healthy debates within organisations and organisational elections at all levels will allow political space to raise genuine local and particular concerns. The dismantling of glass ceilings based on autocracy, family background, region, caste and religion will go a long way in creating an ideal environment for the empowerment of the diverse and heterogeneous people.

Many of our leaders and politicians are parochial and partisan. Their worlds are dominated by individual ambition, immediate goals, and narrow sectarian objectives, and they bat for limited constituencies. There is a dearth of visionaries. Many parties have non-inclusive agendas. It is politically naive to expect model parties with true internal democracies, but any movement in this direction will benefit the organisations and the nation. Until such time, the electorate will have to be astute in choosing the least damaging option. Often, the choice is between the devil and the deep blue sea. The fragmentation of parties and the number of partners within coalitions will reach an equilibrium and saturation when political space for debate and dissent is available and valued within political organisations. Without intra-party democracy in most national and regional parties, the polity will continue to fragment and parties will splinter; the pressure and complexity of coalitions will increase with further reduction of choice for the electorate. Coalitions have forced India to recognise that all politics is local. However, the question is: will it increase the insight among political leaders and transform political parties?

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Politics of intolerance

A storm has gathered over Joseph Lelyveld's book, *Great Soul: Mahatma Gandhi and His Struggle with India*. And it's uniting unlikely partners such as Union law minister Veerappa Moily and Gujarat chief minister [Narendra Modi](#). Indian politicians are fulminating over the book's purported description of Gandhi's years in South Africa during the early 20th century, particularly that part of the volume carrying letters between Gandhi and his German friend, Hermann Kallenbach. While Moily states that the Centre is outraged enough to consider a ban, Modi has actually proscribed *Great Soul* in Gujarat. Maharashtra is close to following suit.

The outrage, however, seems based on misunderstandings. Intimate in a typically Victorian manner, mentioning bodies, lust and slavery, Gandhi's letters to Kallenbach contain sections highlighted by reviewers who've implied that Lelyveld may have been suggesting that Gandhi was 'bisexual'. They also said remarks about indigenous Africans attributed to Gandhi showed Lelyveld's understanding of him as 'racist'. Note that the author himself disowns both interpretations. Only, our politicians aren't listening.

Largely choosing to ignore the 'racism' charge and fixated on the sexuality angle, Moily wants a ban to "protect the nation from being taken for a ride", Modi for the book's apparently "perverse writing which has hurt the sentiments of those with capacity for sane and logical thinking". Clearly, neither end of this political rainbow considers average Indian readers intelligent enough to make up their own minds about what offends or doesn't, or mature enough not to require a nanny state to burn, bury or ban books on their behalf. This politically self-

serving coddling has a long history. In 1988, claiming to protect 'Muslim sentiments', the Congress government banned Salman Rushdie's *The Satanic Verses*. In 2003, Taslima Nasreen's work, *Dwikhandito*, was banned in Bengal by a Left Front shoring up its Muslim votebank. James Laine's book on Shivaji was banned in 2004 and 2006 in Maharashtra, and Javier Moro's 'fictionalised biography' of [Sonia Gandhi](#) was targeted in 2010.

Such politics betrays an insecure touchiness about our icons that's out of place in a mature democracy professing to uphold freedom of expression. Ironically, many famous personalities themselves challenged official projections of their image in their own lives. Gandhi himself was passionately honest. He chronicled his trials with "truth" in detail, leaving diaries and letters for future generations to read and interpret for themselves. These writings provide deep and diverse insights into the complexity of the figure of Gandhi. We have seen intolerance of views with regard to other icons as well, from Netaji and Ambedkar to Satyajit Ray. Evidently, the more [India](#) marches ahead, the more illiberal its politicians seem to get.