

In 'demolition raj', the High Courts as beacons

In the districts of Gurugram and Nuh in Haryana, there have been clashes between Hindu and Muslim communities. People have been killed and public property damaged. Tensions are running high. A good administration would have moved in to restore law and order, maintain peace, arrest the culpable, and commence the legal process of charge and prosecution. It would have also housed people left on the streets due to property damage.

However, in today's India, good administrations are not the norm. Following the example of its peers in Uttar Pradesh, the Haryana government has taken to demolishing the houses of persons it suspects to have been involved in the violence. Overnight and without notice.

And although there has been loss of both Hindu and Muslim lives, it is only the houses of the Muslim community that are targeted. Selectively and exclusively. More people are left on the streets. And the rule of law is also demolished, most notably Article 14 enshrining the equality of law and equal protection of law. That has given way to political expediency and capital, the electoral advantages of teaching a lesson to the minorities, to the rising crescendo of hate-politics, all with an eye on the next general election.

A tepid response

In all this, where do the courts sit, the guardians of the Constitution and protectors of the rights flowing therefrom? When the bulldozers in Uttar Pradesh were rampaging, the Supreme Court of India was moved. Its response was tepid, hearing the government say that these were illegal constructions and the law was taking its course. And it stopped with making a general observation that all procedures should be followed. But what was expected were hard questions: Why are you targeting one community? Why is it only these houses when there are thousands of illegal constructions? Why the quick speed demolition? What happened to notice and inquiry? And hard action has to follow when hard questions are not answered satisfactorily. Rebuild houses. Pay interim compensation to those affected. Take action against the official demolishers. If that had been done in the first instance by the Court, other State governments would be wary. Precedents are not just for the law reports, but guides for future actions.

Unfortunately, we are at a stage where the Supreme Court seems to be giving in a little more



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Every assertion of what a court should do when the rule of law is demolished by the state is a welcome one — as the judges of the High Court of Punjab and Haryana have shown

than it should. Look at the repeated extensions to the Director of the Enforcement Directorate in blatant disregard of several Supreme Court orders. But still the Court does not draw a line.

It is a simple fact of constitutional realpolitik — if you do not draw the Lakshman Rekha and if you do not punish every transgression, that line will resemble the one on the *kabaddi* field where there will be forays with impunity. Look at the enormous delays in hearing cases relating to the dilution of Article 370 and conversion of Jammu and Kashmir into Union Territories, electoral bonds, demonetisation, immunity of legislators under Article 194, validity of the Assam Accords and amendments to the Citizenship Act to the extent that we now have a doctrine of adjudication by *fait accompli* — the illegality complained of has been in force for such a long time that it cannot be remedied, and must therefore be accepted.

And we have several instances of fine lawyers being nominated for High Court judgeships by the collegium — Somasekhar Sundaresan, Saurabh Kirpal, R. John Sathyan, and one of the country's finest judges, S. Muralidhar as Chief Justice of the Madras High Court. But the government sits on the files and the Court does not display the rod.

An indictment of the powers that be

Which is why every assertion of what a court should do is a welcome one; and very welcome when it comes from a High Court. In the Haryana demolitions, it is the Bench of Justices G.S. Sandhawalia and Harpreet Kaur Jeevan who have asked the most pointed question: Is this ethnic cleansing? Asking the question is as powerful as dealing with the answer — that a court in India should have to voice the question is a damning indictment of the powers that be. The court went further and put an immediate stop to the demolitions. It also recorded the State Home Minister's justification of the demolitions and immediately reminded him of Lord Acton's immortal classic — "power tends to corrupt, and absolute power corrupts absolutely". And this was done *suo motu*, on the court's own motion. Bravo, my Lords, we are grateful. Every candle lights up the darkness, and this is no small beacon.

But commentators and public opinion makers have asked two other uncomfortable questions. Could not the Supreme Court have taken *suo motu* action? Why is it that no one approached the Supreme Court?

As the Bob Dylan song goes, 'The answer, my

friend, is blown' in the wind'.

When in times of trouble, I recollect what Justice Vivian Bose had said. One has to read his judgment in *State of West Bengal vs Anwar Ali Sarkar*, a case that concerned an act of the West Bengal government which allowed the State to establish special courts for the trial of certain offenders without any reasonable basis for differentiating such offenders from others.

Justice Bose, who was steely voiced and constitutionally eloquent, said this: "The law of the Constitution is not only for those who govern or for the theorist, but also for the bulk of the people, for the common man for whose benefit and pride and safeguard the Constitution has also been written."

And, "When the froth and the foam of discussion is cleared away and learned dialectics placed on one side, we reach at last the human element which to my mind is the most important of all. We find men accused of heinous crimes called upon to answer for their lives and liberties. We find them picked out from their fellows ... they are deprived of substantial and valuable privileges of defence which others, similarly charged, are able to claim... The question with which I charge myself is, can fair-minded, reasonable, unbiased and resolute men, who are not swayed by emotion or prejudice, regard this with equanimity and call it reasonable, just and fair, regard it as that equal treatment and protection in the defence of liberties which is expected of a sovereign democratic republic in the conditions which obtain in India today? I have but one answer to that. On that short and simple ground I would decide this case and hold the Act bad' (*deletions mine*).

Leading the way

We have had many disappointments with our recent esteemed senior judges, and a former Chief Justice of India has raised eyebrows sharply with his newly found doubts about the basic structure after his nomination to the Rajya Sabha. It is time we recalled the greats of our jurisprudence, kept them in mind and lived by the truths they told. And it is time the High Courts stepped up to perform the stellar role given to them by Article 226 of the Constitution, a power greater than the corresponding power the Supreme Court has. They performed spectacularly during the dark Emergency, but they, and us, were let down even more spectacularly by the Supreme Court. For rising to the task again, the judges of the High Court of Punjab and Haryana have shown the path.

India needs a new economic policy

The National Statistical Office (NSO) has released the 2022-23 GDP fourth-quarter growth rate figures. Measured against fourth-quarter figures of the previous year, the data give a gloomier picture than what the media publications of the Press Information Bureau present. According to NSO data, in the first COVID-19 pandemic quarter of 2020-21, i.e., April 1 to June 30, 2020, GDP growth rate was minus 23.8% when compared to GDP of the same period in 2019-20.

Three conclusions based on NSO data since 2014-2015 are important for a reality check. First, the growth rate of GDP, since 2015-16 had been declining annually, and has fallen in the fourth quarter to what it was earlier, and sneeringly referred to by economists as "The Hindu Rate of Growth" - 3.5% growth rate in GDP.

Second, it is essential to recognise that since 2014, Prime Minister Narendra Modi's widely publicised "Vikas" in reality achieved the so-called "Hindu rate of growth" in GDP of what had been achieved in the period 1950-77 - the socialism period.

Third, during the tenures of P.V. Narasimha Rao and Manmohan Singh, GDP growth rates rose for the first time to between 6% to 8% per year over a 15-year period, i.e., 1991-96 and 2004-2014 (with the usual cyclic ups and downs).

That is, it took Narasimha Rao and Manmohan Singh as Prime Ministers to understand and reform the Indian economic system, to reduce state participation and increase incentives for capital and labour providers, thus achieving a higher and faster growth of the economy.

What is alarming today is the serious and continuous decline in GDP growth rates which began in 2016. And that decline continues even now. The Modi government has failed to structure economic policy coherently and which has prevailed during the period 2014-2023.



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It needs to be a policy based on clear objectives, priorities, have a strategy to achieve targets, and spell out an intelligent and transparent resource mobilisation plan

The growth rate of GDP has been consistently in decline since 2016. There are also the brazen announcements of rosy predictions being published annually in the media, with outrageous claims made by the Prime Minister such as \$5 trillion GDP by 2024 (announced in 2019), implying an annual doubling of GDP in five years, or, in other words, a 15% annual growth rate of GDP. No policy structuring has been presented.

Steps to be taken

By "structuring", this writer means a clear implementation of what the economic objectives will be, and priorities that should be assigned to the various objectives. Thereafter, there ought to be a strategy on what should be incentivised and what should be deleted or discontinued. For example, in today's dark economic condition, it is essential that personal income tax is abolished and Goods and Services Tax scrapped to incentivise investors and earners.

Resources by the government should be mobilised through indirect taxes and also by liberal printing of currency notes and which is circulated by paying wages to the employment generated in extensive public works. The annual interest paid on fixed-term savings in bank accounts should be 9% or so to increase purchasing power of the middle classes. Interest rates on loans to small and medium industries should be no more than 6% of the loans to increase production of these sectors, and thus employment.

This writer is prepared to have a public debate with any government official and prove that "Modinomics" is an unstructured and gigantic flop. No macroeconomic goal that has been announced has been reached to date.

India needs a new economic policy urgently. It needs to be a policy that is based on clear objectives, priorities, have a strategy to achieve

targets, and spell out an intelligent and transparent resource mobilisation plan to finance policies. As far as the Finance Ministry is concerned, we have only incoherent public announcements - a hotchpotch - with no accountability.

The market system is not a free-for-all or an *ad hoc* measure. It has a structure with rules for transactions. Market system capitalism works as the principal drivers are incentive and capital (whose use for innovation raises factory productivity and the growth rate of GDP). Even a totalitarian state such as China understood this. During the tenure of Deng Xiaoping as the supreme, it allowed the socialist economic system to die and an economic market-based system came in.

Deregulations should also not mean that we reject government intervention for safety nets, affirmative action, market failure and creating a level-playing field. Democratic institutions have to be empowered to guard against public disorder arising from rapid de-regulation - as it happened in Russia post-1991. Russia experienced chaos and misery. This dictatorship has returned for the Russians, and with it a complete loss of human rights and democratic values.

The trade-off between the public sector and de-regulation and the sale of loss-making units, increasing employment, through affirmative action, and easy access to social security and a safety net are essential to create a stake for the poor in the system. This creates a level-playing field in a competitive system, ensures transparency, accountability, and trusteeship (philanthropy), as well as corporate governance to legitimise profit-making smoothly which drives the market system. Such steps reduce monopolistic tendencies and help in the formation of a democratic and harmonious society.