A new sense of urbanisation that is dominating

There have been two events in the media glare in the last nine months in India, namely, the inauguration of two very important institutions, i.e., the new Parliament building, which is a political institution, and the Ram temple, a religious institution, which raise pertinent issues. Both of these were inaugurated by the Prime Minister of India. Does this mean that the elected representative of the people can comfortably take over both the roles of democracy and worship? Will our future cities be driven by religion as the core, and not work, industry, and modernism, which have been an essential feature of the last seven decades of urbanisation?

It is estimated that around ₹85,000 crore will be spent in infrastructure building in Ayodhya. Will religious cities be the new paradigm of urban development in India?

Colonial versus new cities

The cities and urban development in the last two centuries draw a rural to urban migration premise for sustaining industrialisation. Metros are colonial cities according to the current discourse and new cities such as Ayodhya, Kashi and Pushkar must be built. The colonial cities were meant for the transport of goods, taxation and then sending them by ship.

Cities also bring in elements of modernism, not just in architecture but also in the entire gamut of culture, literature, human behaviours and the like. There are anecdotes of how this modernist feature was embedded in the development model of the Indian city. Innovative design and modernist features brought in by Le Corbusier, and the influence of Habib Rahman, who was brought in by Jawaharlal Nehru to design some of the important buildings in the national capital, laid an emphasis on modern technology and mass production techniques and material to design and manufacture high quality and cheap goods that are accessible to many.

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> The old understanding that cities are considered to be centres of enlightenment, workplace, and habitat is being challenged, also bringing into focus the role of the state

Likewise, almost all modern towns were developed with spaces for theatre, culture, art, and recreation. This was primarily the driving feature in modern cities.

The building of new towns met several needs – from providing jobs and homes for refugees and absorbing excess population from the older urban areas, to generating economic development in the local region and serving as symbols of the new modern India that was emerging, though not completely ideal and commensurate to the needs, but quite inclusive in design and what was built.

In the current phase, a new sense of urbanisation is dominating. And the old understanding that cities are considered to be centres of enlightenment, workplace, and habitat is being challenged. Cities should not just be centres of workplaces but also centres of *yatras*, pilgrimage and so on. Thus, we find big corporates also landing in a small town such as Ayodhya and investing heavily in its infrastructure.

Thus, the new conundrum in India is for a new form of urbanisation; a new revivalism of the faith where the cities and towns and where the system should be aligned to the religion of the majority, and not separate from it.

Investments and random modules

The post-colonial period saw the emergence of new towns, and some of them were industrial as well such as Bhilai, Rourkela, and Chandigarh to name a few. Still, the metros attracted the largest numbers of people and investments.

We know from the ranking of urban centres that if one goes by metro classification of the highest in population and wealth generation, colonial cities emerge in the list. After that the other urban centres are regional in character. There is an effort to try and elevate a regional pilgrimage city to that of a colonial city – the heavy investment in the urban infrastructure of Ayodhya is a pointer. It is good to spend resources in any regional city be it for production or tourism or otherwise. However, since there is no apparent plan to direct such expenditure according to a justifiable plan of investment in regional cities across India, one wonders what the justification of spending on random modules in a haphazard way is. The new Central Vista. The Sardar Patel statue. The high-speed bullet train project between Ahmedabad and Mumbai. The temple in Ayodhya. What do we understand from this enormous expenditure?

It seems to indicate that the goal of the Indian government is to be a modern nation sitting on an ancient seat and to try to reverse the separation of religion from politics – to signal religion to be a social phenomenon rather than a private one.

The role of the state and social good

This draws one's attention to one of the moot points. And that is to understand what the role of the state is in building cities and creating investments. We know that the accumulation of capital and the generation of surplus in a democratic society should be directed towards social good, and not for religious good, as we have experienced in the early centuries of Hindu revivalism. What does social good mean? In simple terms it means that the surplus generated must be distributed to build modern institutions, education, health, social infrastructure, particularly in a society that screams for social sector investments (the World Bank estimates that India will need to invest $840 billion over the next 15 years for urban infrastructure), and not for religious good, which is exactly what we are doing now.

This revivalism is based on an acute form of centralisation of finances and a ghettoisation of urban spaces on a religious basis. An answer to this is decentralisation, democratisation and a more dynamic coexistence of citizens, with access to equal rights and obligation.

Intra-group caste variances, equality and the Court's gaze

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Soon, a seven-judge Bench of the Supreme Court of India will deliver its judgment in *State of Punjab vs Davinder Singh*, on a question of law that carries with it enormous significance for the future of affirmative action and reservations under the Constitution. Can State governments make a sub-classification within the proportion prescribed to Scheduled Castes and Scheduled Tribes in recruitment to public employment? In other words, by making a special allowance for certain groups that are more backward than others, are regional units encroaching on a domain that remains within Parliament's exclusive preserve?

Studies and data have shown that although they have been bracketed into two homogenous categories, as Scheduled Castes (SC) and Scheduled Tribes (STs), within the groups there are differing levels of development; and some castes are more discriminated against than others. In redressing this position, should State governments not be afforded the power to recognise intra-group variances? The judgment in *Davinder Singh* will seek to answer this. And, in doing so, it might well serve to provide much needed clarity to an area of law that has long required mending.

A circular in Punjab in 1975

The issues at stake in the case emanate out of a circular notified by the Government of Punjab in 1975. The circular stipulated that out of the total seats reserved for SCs in the State, 50% of the vacancies would be offered to Balmikis and Mazhabi Sikhs. The other half would be open to all the remaining groups within the SC category. In July 2006, the Punjab and Haryana High Court struck down this notification, following a judgment of the Supreme Court, in 2004 in *E.V. Chinnaiah vs State of Andhra Pradesh*.

In *Chinnaiah*, a five-judge Bench quashed the Andhra Pradesh Scheduled Castes (Rationalisation of Reservations) Act, 2000, on the ground that it offended Article 341 of the Constitution. This provision allows the President of India to notify a list of SCs for each State, and stipulates that the list can only be modified by Parliament.

The Andhra Pradesh law sought to carve four distinct categories out of the President's list and granted to each category a separate quota based on its *inter se* backwardness. The Court found that the State government had no power to tinker with the list because it was clear on a bare reading of Article 341 that such authority vested only with Parliament. The judgment also pointed to B.R. Ambedkar's speech in defence of the presidential list, in which he had warned that if State governments were allowed to amend the list, we ran the risk of the exercise partaking purely political considerations.

Even though its 1975 circular was struck down, the Government of Punjab remained persistent. It enacted a new law, i.e., the Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006, which once again provided first preference to Balmikis and Mazhabi Sikhs. The High Court declared this law too to be unconstitutional. But in August 2020, sitting on appeal over the decision, the Supreme Court doubted the correctness of its earlier verdict in Chinnaiah, prompting the creation of a seven-judge Bench and a fresh hearing on the issues raised.

In questioning the extant view, the Supreme Court cited its judgment in *Indra Sawhney vs Union of India*, which arose out of the Mandal Commission's report. There, a nine-judge Bench had held that sub-classifications within socially and educationally backward classes (OBCs) for services under the government was permissible. The majority endorsed Justice Chinnappa Reddy's judgment in *K.C. Vasanth Kumar & Another vs State Of Karnataka* (1985). In it, he had ruled that while the propriety of making sub-classifications might depend on the facts of each case, "we do not see why on principle there cannot be a classification into backward classes and more backward classes, if both classes are not merely a little behind, but far far behind the most advanced classes. In fact such a classification would be necessary to help the more backward classes; otherwise those of the backward classes who might be a little more advanced than the more backward classes might walk away with all the seats, just as, if reservation was confined to the more backward classes and no reservation was made to the slightly more advanced backward classes, the most advanced classes would walk away with all the seats available for the general category leaving none for the backward classes."

> The case of 'State of Punjab vs Davinder Singh' highlights the point that within SCs and STs, there are differing levels of development, with some castes more discriminated against than others

Equality and castes

Beyond this, at the root of the matter is the Constitution's collective commitment to equality. Contained in Articles 14 to 16, which can be read together as a code, is a promise of substantive equality. This guarantee recognises that individuals, throughout India's history, have been discriminated against based on their caste. Therefore, our constitutional vision demands that we be mindful of group interests in striving to ensure equal treatment. Under this model, reservations must be seen not as a measure in conflict with – and in exception to – the basic notion of equality, but, instead, as a means to furthering and entrenching that goal.

Indeed, since its judgment in *State Of Kerala & Anr vs N.M. Thomas & Ors* (1975), the Supreme Court has, at least in theory, appeared to acknowledge that governments not only possess the power to make reservations – and correct historical wrongs – but also have a positive duty to ensure substantive equality. Viewed thus, if the Government of Punjab were to find on the basis of its studies – and it certainly has in this case – that its existing measures of reservation have not adequately reached Balmikis and Mazhabi Sikhs, then it is constitutionally obligated to ensure that these measures are corrected.

If Article 341 is seen as constituting a bar against sub-classification, then that prohibition would run athwart the Constitution's equality code. In any case, even on a plain reading, Article 341 does not impose such a prohibition. It merely proscribes State governments from including or excluding castes from the President's list of SCs. Where States provide special measures to certain castes that are within this list, they do not act to include or exclude other castes from the list. Those castes will continue to be entitled to the State's general provisions of reservation.

On sub-classification

In the case of the Punjab law, it decidedly does not modify the President's list. It merely accounts for *inter se* backwardness within that list by providing for a greater degree of preference to Balmikis and Mazhabi Sikhs. This sub-classification is also in keeping with the Constitution's time-honoured theory that reasonable classifications are permissible to ensure that equality is achieved.

Once we see the list of SCs and STs not as homogenous categories, but as comprising different castes with differing levels of development, a sub-classification will have to be judged on its own merits. That is, the Court will only have to examine whether Balmikis and Mazhabi Sikhs are intelligibly differentiable from other castes within the President's list, and whether the grant of preferential treatment to them – and the extent of such grant – bears a rational nexus with the law's larger objective of ensuring fair treatment.

It is time the Supreme Court takes seriously what it recognised in *N.M. Thomas* – that governments have both a power to make reservations and a duty to ensure that the constitutional dream of equality is achieved. To that end, any authority vested in the States to provide for special measures to those castes within SCs and STs who are most discriminated against must be seen as a way of making real the idea of equal opportunity.